

# EXHIBIT

## 20

**KING**  
**vs.**  
**PARKER, et al.**

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**WARDEN TONY MAYS**

**July 27, 2021**



**Terri Beckham, RPR, RMR, CRR**

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1  
2 IN THE UNITED STATES DISTRICT COURT  
3 FOR THE MIDDLE DISTRICT OF TENNESSEE  
4 NASHVILLE DIVISION

5 TERRY LYNN KING,

6 Plaintiff,

7 vs.

Case No. 3:18-cv-01234

8 TONY PARKER, et al.,

9 Defendants.

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13 Video Deposition of:

14 WARDEN TONY MAYS

15 Taken on behalf of the Plaintiff

16 July 27, 2021

17 Commencing at 9:09 a.m.  
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22  
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S T I P U L A T I O N S

The Video Deposition of WARDEN TONY MAYS was taken by counsel for the Plaintiff, at Bass, Berry & Sims, 150 Third Avenue South, Suite 2800, Nashville, Tennessee, on July 27, 2021, for all purposes under the Federal Rules of Civil Procedure.

All formalities as to caption, notice, statement of appearance, et cetera, are waived. All objections, except as to the form of the question, are reserved to the hearing, and that said deposition may be read and used in evidence in said cause of action in any trial thereon or any proceeding herein.

It is agreed that Terri Beckham, RMR, CRR, Notary Public and Licensed Court Reporter for the State of Tennessee, may swear the witness, and that the reading and signing of the completed deposition by the witness are reserved.

\* \* \*



1 \* \* \*

2 THE VIDEOGRAPHER: We are now on the  
3 record. Today is Tuesday, the 27th of July, 2021,  
4 and the time indicated on the video screen is  
5 9:09 a.m. This is the video deposition of Warden  
6 Tony Mays in the matter of Terry King versus Tony  
7 Parker, et al., Case No. 18-cv-1234, filed in the  
8 Middle District of Tennessee. This deposition is  
9 being held today at the office of Bass, Berry & Sims  
10 at 150 3rd Avenue South, Nashville, Tennessee. My  
11 name is Augusta Smith, the videographer, and the  
12 court reporter is Terri Beckham, both in association  
13 with Elite-Brentwood Reporting Services.

14 Would counsel please introduce  
15 yourselves and state whom you represent.

16 MR. KURSMAN: Good morning. My name is  
17 Alex Kursman. I represent Terry King.

18 MR. SUTHERLAND: My name's Scott  
19 Sutherland, and I represent the defendants, Tony  
20 Parker and Tony Mays.

21 \* \* \*

22 WARDEN TONY MAYS,  
23 was called as a witness, and after having been duly  
24 sworn, testified as follows:

25 ///

EXAMINATION

QUESTIONS BY MR. KURSMAN:

Q. Good morning, Mr. Mays.

A. Morning.

MR. KURSMAN: Before we begin, I just want to note for the record that we have introduced Exhibits 1 through 65 in previous depositions. We are just going to keep going sequentially.

BY MR. KURSMAN:

Q. So in front of you right now you have a binder with those exhibits and a few additional exhibits as well.

A. Okay.

Q. Like I said a minute ago, my name is Alex Kursman. I'm an attorney with the federal defender in Philadelphia.

I represent the plaintiff in this case, Terry King, in King v. Parker, et al., pending in the Middle District of Tennessee.

Do you understand that you're here today to answer questions related to the King case?

A. Yes.

Q. And what is your understanding of what the case is about?

A. My understanding of what this case is about,

1 I've been told different methods, alternative  
2 methods, to possibly execution.

3 Q. Okay. And have you -- have you read anything  
4 about this case in particular before this  
5 deposition?

6 A. Other than my previous depositions?

7 Q. Yes.

8 A. No.

9 Q. What about your previous deposition?

10 A. I just read previous depositions and  
11 protocols.

12 Q. Okay. So let's cover a few ground rules,  
13 then. And I think you just mentioned this, but how  
14 many times have you taken depositions before?

15 A. In relation to this?

16 Q. In total.

17 A. Probably three or four.

18 Q. And what were all those cases about?

19 A. Every one of them was tied to probably lethal  
20 injection.

21 Q. Oh, each deposition that you -- you've taken  
22 in the past was tied to lethal injection?

23 A. Are you referring to my lifetime?

24 Q. Yeah, your lifetime. I apologize.

25 A. Exactly.

1 Q. Each of them was in relation to lethal  
2 injection, that's what you're saying, in your  
3 lifetime?

4 A. Correct.

5 Q. Okay. And do you -- do you remember when  
6 those depositions were?

7 A. Exact dates? Not exact dates. Probably in  
8 the last five years maybe.

9 Q. Okay. So you think you've taken about three  
10 other depositions --

11 A. Probably, yes.

12 Q. -- in the last five years --

13 A. Yes.

14 Q. -- on lethal injection cases?

15 A. (Nods)

16 Q. Okay. And do you understand that you're  
17 under oath?

18 A. I do.

19 Q. Okay. And you understand that means you need  
20 to tell the truth to the best of your ability?

21 A. To the best of my ability.

22 Q. Is there any reason that you can't testify  
23 truthfully or accurately today?

24 A. No reason.

25 Q. Okay. For example, are you filing ill?

1 A. No.

2 Q. Are you taking any medication?

3 A. Yes.

4 Q. Okay. And what medication are you taking?

5 A. Cholesterol, blood pressure.

6 Q. Okay. Is there any medication that you're  
7 taking that would affect your ability to recall  
8 facts or give accurate testimony today?

9 A. No.

10 Q. Okay. And are you represented by counsel  
11 today?

12 A. I am.

13 Q. And who is that?

14 A. It would be Mr. Rob and company.

15 Q. Okay. And as I'm sure you're aware, the  
16 court reporter is making a record based on what you  
17 say, so you'll have to answer verbally instead of  
18 nodding your head.

19 Do you understand that?

20 A. I do.

21 Q. Okay. And if you could, could you wait for  
22 me to finish my questions before you answer? And I  
23 promise I'll do the same for you. I'll finish --  
24 let you finish your answers before I ask the next  
25 question.

1 Do you understand that?

2 A. I do.

3 Q. Okay. And if you don't understand a  
4 question, just let me know and I'll try to rephrase  
5 it so you can understand it. Sometimes I ask some  
6 long-winded or confusing questions, so just let me  
7 know and I'll try to make the question a bit  
8 clearer, okay?

9 A. Just let me know if I'm answering too quick.

10 Q. Okay. I appreciate that. And if you need a  
11 break at any time, just let me know and we can take  
12 a break whenever you need, okay?

13 A. Okay.

14 Q. And your lawyer may object from time to time,  
15 but you'll still need to answer my questions unless  
16 that objection is based on some sort of secrecy  
17 statute or a privilege.

18 Do you understand that?

19 A. I do.

20 Q. Okay. Do you have any questions?

21 A. None.

22 Q. Okay. And I think we just discussed it a  
23 second ago, but what did you do to prepare for this  
24 deposition?

25 A. I read my previous depositions and I visit

1 the protocol currently as I always do, often.

2 Q. And did you meet with your attorneys before  
3 the deposition?

4 A. I did.

5 Q. Okay. And who?

6 A. Mr. Sutherland. I'm terrible with names.

7 The other gentleman, third from the right.

8 Q. And how many times did you meet with them?

9 A. Twice.

10 Q. And how long were the meetings?

11 A. First meeting, approximately two hours or  
12 two-and-a-half. Second meeting, approximately two  
13 hours.

14 Q. And when were the meetings?

15 A. On yesterday.

16 Q. Both meetings were yesterday?

17 A. Yes.

18 Q. Okay. So you met with them once for an  
19 hour-and-a-half, then you took a break and met with  
20 them again for two hours?

21 A. I met with them for about two hours yesterday  
22 morning.

23 Q. Uh-huh.

24 A. I met with them about two hours last night.

25 Q. And was anyone else present aside from you

1 and the two attorneys that you just mentioned?

2 A. No.

3 Q. Okay. And did you review any documents  
4 during those meetings?

5 A. Protocol and my deposition prior.

6 Q. Was that it? Just those two documents?

7 A. That was it.

8 Q. Okay. Did any of those documents refresh  
9 your recollection as to any specific issues?

10 A. Nothing specific, just reading over the  
11 previous deposition.

12 Q. Like, for example, were there any dates that  
13 you couldn't remember or specific topics you  
14 couldn't remember?

15 A. Of course, I probably struggled through some  
16 of it. It has been a few years since I was depo'd  
17 last in reference to that.

18 Q. Okay. And why did you review your previous  
19 deposition?

20 A. Basically refresh my memory.

21 Q. Okay. And did it do that?

22 A. Yes.

23 Q. Okay. What did it refresh your memory on?

24 A. Particulars?

25 Q. Yeah, particulars.



1 A. I really can't say. I can't remember.

2 Q. Well, was there anything that you recalled,  
3 after reading your deposition, that you didn't  
4 remember before reading it?

5 A. Not really.

6 Q. Did you think there was going to be anything  
7 that you would have recalled after reading it?

8 A. It's just, like, a safe feature that I did  
9 just to refresh my memory in case it wasn't.

10 Q. Okay. Was it -- was it because you wanted to  
11 testify today consistently with the deposition back  
12 then?

13 A. Well, I always want to be able to tell the  
14 truth.

15 Q. Sure. But was the reason you reviewed that  
16 deposition that was taken a few years ago, like you  
17 said, was the reason that you reviewed that  
18 deposition was so that you could testify  
19 consistently today with your answers in that  
20 deposition?

21 A. Correct.

22 Q. Okay. Did you meet with anyone other than  
23 your attorneys to prepare for this deposition?

24 A. No.

25 Q. Okay. Did you review the transcripts of any

1 other depositions taken in this case? So I don't  
2 mean your prior deposition, I mean any people who  
3 were previously deposed in this case.

4 A. No.

5 Q. Okay. Did you consult -- did anyone consult  
6 with you to prepare for another deposition in this  
7 case?

8 A. Anyone other than my attorneys?

9 Q. Yes. So what I mean by that is, for  
10 instance, did the commissioner talk to you about his  
11 preparation for his deposition --

12 A. No.

13 Q. -- or the drug procurer or the executioner?

14 A. No.

15 Q. Okay. And aside from the protocol and your  
16 prior deposition, did you review any papers that  
17 were filed in this case? And what I mean by that  
18 is, like, the complaint or any answers submitted by  
19 defendants' counsel.

20 A. No.

21 Q. Okay. Did you discuss this deposition with  
22 anyone other than your counsel?

23 A. No.

24 Q. Do you have a spouse?

25 A. I do.

1 Q. Did you discuss the deposition with your  
2 spouse?

3 A. No.

4 Q. Okay. Did you do anything else to prepare  
5 for the deposition?

6 A. No.

7 Q. Okay. And how much time in total do you  
8 estimate you spent preparing for the deposition?

9 A. To include my attorneys, spending time with  
10 my attorneys and reading deposition, protocol,  
11 probably seven hours total.

12 Q. Okay. So a minute ago you testified that you  
13 spent three-and-a-half hours meeting with your  
14 attorneys. What did you spend the other  
15 three-and-a-half hours doing to prepare for this  
16 deposition?

17 A. I thought I stated earlier I spent a couple  
18 of hours yesterday morning with them and a couple of  
19 hours last night and the rest of the time would have  
20 been me reviewing my deposition, along with the  
21 protocol.

22 Q. Okay. So you reviewed your deposition on  
23 your own?

24 A. On my own.

25 Q. Okay. Did you review the protocol on your

1 own as well?

2 A. I did.

3 Q. Okay. And did you talk with your attorneys  
4 about both the protocol and your prior deposition,  
5 without going into the substance of those  
6 conversations?

7 MR. SUTHERLAND: Object to the form.

8 BY MR. KURSMAN:

9 Q. You can still answer.

10 A. I did.

11 Q. Okay. Now, let's switch gears a little bit  
12 and talk about your background. What is your  
13 highest level of education?

14 A. Master's degree.

15 Q. Okay. And where did you get that degree?

16 A. Tennessee State University here in Nashville.

17 Q. Do you remember what year that was?

18 A. '18, '19.

19 Q. Okay. And what type of training did you get  
20 as part of that degree?

21 A. I got a master's in public administration.

22 Q. And were you the warden at the time that  
23 you --

24 A. I was the warden at the time.

25 Q. Okay. And what type of information did you

1 learn in that master's degree?

2 A. Various things. How to deal with public,  
3 public administration, public society, corrections,  
4 just to name a few.

5 Q. And do you have any other postgraduate  
6 degrees aside from your master's degree that you  
7 just mentioned?

8 A. I have a bachelor's.

9 Q. And where is the bachelor's from?

10 A. Bethel University.

11 Q. Okay. What was your bachelor's degree in?

12 A. It was also in public administration.

13 Q. And what year was that?

14 A. That was in 2016.

15 Q. So you got your bachelor's degree in 2016?

16 A. Uh-huh.

17 Q. And your master's degree in 2019?

18 A. Correct.

19 Q. And what year did you become the warden?

20 A. I became the warden in '17.

21 Q. Okay. And what year did you graduate high  
22 school?

23 A. 1982.

24 Q. 1982. And where did you graduate high  
25 school?

1 A. Lake County High School.

2 Q. Okay. Did you get any special training at  
3 your high school?

4 A. Define "special."

5 Q. Like, was it a STEM school or a scientific  
6 school, or was it just your normal high school?

7 A. Just your normal high school.

8 Q. Okay. And have you -- did you complete any  
9 other trainings between the year you graduated high  
10 school, that almost 30-year period, I guess, that  
11 you graduated high school and then when you got your  
12 college degree?

13 A. Other than training that coincide with my  
14 job?

15 Q. Yeah. And what kind of training did you get  
16 that coincided with your job?

17 A. We have a correctional academy, Tennessee  
18 Corrections Academy, that is designed for  
19 correctional staff. We learn policies, procedures,  
20 safety measures, security measures, several things.

21 Q. And who teaches at that correctional academy?

22 A. Those are instructors at the academy.

23 Q. Who? I'm sorry?

24 A. Instructors at the academy.

25 Q. Right. Where are the instructors from?

1 A. I don't know where they're from. They just  
2 work at the Tennessee Corrections Academy.

3 Q. Are they -- are they employed by TDOC?

4 A. They are.

5 Q. Are they corrections officers within TDOC?

6 A. They are not correction officers, they're  
7 corrections instructors.

8 Q. And is that their full-time job, corrections  
9 instructors?

10 A. That is their full-time job.

11 Q. Okay. And do you become a corrections  
12 instructor from first being a corrections officer?  
13 Is that how it works?

14 A. I wouldn't know that. I've never applied.

15 Q. Okay. But you as the -- as the warden, you  
16 don't oversee that at all now?

17 A. Oh, no.

18 Q. Okay. Do you hold any certifications or  
19 certificates?

20 A. Some in the past that have expired.

21 Q. Uh-huh. And what would those be?

22 A. Lethal weapons, chemical agents, things of  
23 that sort.

24 Q. And when you say "lethal weapons," what does  
25 that mean?

1 A. How to handle a firearm, Mace, fogger, pepper  
2 fogger, things of that nature.

3 Q. So are you trained in handling a firearm?

4 A. I am.

5 Q. Okay. And can you describe that training for  
6 me?

7 A. Classroom, safety, how to handle a weapon,  
8 break down a weapon for cleaning purposes, storing,  
9 things of that nature.

10 Q. And do you own a firearm?

11 A. I do.

12 Q. Do you carry it as part of your job?

13 A. I don't.

14 Q. Okay. Do you have any medical training?

15 A. Other than basic first aid?

16 Q. You don't other than basic first aid? Is  
17 that what you're saying?

18 A. Correct.

19 Q. Okay. And what is the basic first aid  
20 training?

21 A. CPR, properly wrap a wound, clean a wound.

22 Q. Do you have any military training?

23 A. Do not.

24 Q. Do you participate in any volunteer programs?

25 A. Do not.



1 Q. Okay. And are you currently employed?

2 A. I am.

3 Q. Where?

4 A. Tennessee Department of Corrections.

5 Q. How long have you been with the Tennessee

6 Department of Corrections?

7 A. This Saturday I think is the first, maybe

8 Sunday, will be 38 years.

9 Q. 38 years. Wow, congratulations.

10 A. Thank you.

11 Q. What is -- what is your current job title?

12 A. Correctional Warden 4.

13 Q. Correctional Warden -- what was that? I'm --

14 A. 4.

15 Q. 4? And what does that 4 mean?

16 A. Once upon a time they was broken in division

17 Warden 1, 2, 3, and 4, but I'm a Warden 4.

18 Q. Okay. And how does that differentiate from

19 Corrections Warden 1, 2, or 3?

20 A. The type of facility that you manage.

21 Q. And is --

22 A. The level of the facility.

23 Q. And would 4 be the highest security level?

24 A. Correct.

25 Q. Okay. And what is your role in that job

1 title?

2 A. My role as the warden, I don't want to be  
3 sarcastic, but just manage the day-to-day  
4 operations. Everything that has to do with that  
5 facility, I'm responsible for.

6 Q. So with the facility obviously running 24  
7 hours a day, seven days a week --

8 A. Correct.

9 Q. -- how much are you working?

10 A. Out of a 24-hour day, I'm really never off  
11 the clock, but physically at the facility, anywhere  
12 from nine to ten hours a day.

13 Q. And you're managing, you're overseeing  
14 everything that goes on at the facility essentially?

15 A. Correct.

16 Q. Okay. Is it a stressful job?

17 A. Can be.

18 Q. Do you have a lot of -- a lot of  
19 responsibilities as the warden?

20 A. That is true.

21 Q. Yeah. Okay. Does anyone report to you?

22 A. They do.

23 Q. How many people would you guess report to  
24 you?

25 A. Under my direct supervision, probably eight.

1 But, of course, everyone in the entire facility is  
2 under the stamp of the warden. But my direct is  
3 approximately eight.

4 Q. And what are the names of the eight people  
5 that report to you?

6 MR. SUTHERLAND: I'm going to object.

7 I'll withdraw the objection to that  
8 specific question.

9 THE WITNESS: Names or positions?

10 BY MR. KURSMAN:

11 Q. Both.

12 A. Okay. I will have one by the name of Ernest  
13 Lewis. He is my associate warden of security. I  
14 will have one by the name of Michael Keys. He's my  
15 associate warden of treatment. The fiscal director,  
16 Jacob Heron (phonetic). HR manager, Tracy -- I have  
17 a tough time pronouncing her last name. Brewington.  
18 Training coordinator, facility training coordinator,  
19 Dina Duncan. Fire and safety of the facility, Amy.  
20 I can't remember her last name. Amy.

21 Let's see. What else, what else, what else?

22 (Pause) That would be it.

23 Q. Okay.

24 A. That's the extent.

25 Q. And do you report to anyone as the warden?

1 A. I do.

2 Q. And who do you report to?

3 A. We have a regional administrator. His name  
4 is Kevin Myers.

5 Q. And that's who you report to?

6 A. That's my immediate supervisor.

7 Q. Do you also report to the commissioner?

8 A. Well, everyone reports to the commissioner,  
9 but Kevin Myers is my immediate supervisor.

10 Q. Okay. And what is -- what is Mr. Myers'  
11 title, again?

12 A. He is the regional administrator.

13 Q. Okay. And what does that mean?

14 A. Within this region, being the middle region,  
15 he is responsible for assisting the wardens of those  
16 facilities.

17 Q. Okay. And what was your role before you were  
18 the warden?

19 A. I was interim deputy warden. Later they  
20 changed those titles to associate warden of  
21 security.

22 Q. Okay. And what were you before you were the  
23 interim deputy warden?

24 A. I was a correctional unit manager.

25 Q. Okay. And how about before you were a

1 correctional unit manager?

2 A. I was a shift captain.

3 Q. And before you were a shift captain?

4 A. I was a shift lieutenant.

5 Q. Okay. And before you were a shift  
6 lieutenant?

7 A. I was a shift sergeant.

8 Q. And before you were a shift sergeant?

9 A. I was a corporal, shift corporal.

10 Q. And before you were a shift corporal?

11 A. I was a correctional officer.

12 Q. Okay. And how about before you were a  
13 correctional officer?

14 A. I hired into the department as a correctional  
15 officer.

16 Q. Okay. And when you became -- what prompted  
17 you to apply to become the associate warden?

18 A. Career advancement.

19 Q. Okay. And how about the warden?

20 A. Career advancement.

21 Q. Did you apply for both of those positions?

22 A. I did.

23 Q. Was it competitive?

24 A. Very much.

25 Q. Okay. Do you -- do you know how many people

1 applied?

2 A. Do not.

3 Q. Okay. Does it pay more than your prior  
4 position?

5 A. Yes.

6 Q. Yeah. Every time you stepped up, did it pay  
7 more than the position prior?

8 A. Not every time.

9 Q. Okay. Were you involved with executions  
10 prior to being the warden?

11 A. (Pause) Depends on what -- how you want to  
12 define "involved." Was I part of the execution  
13 team?

14 Q. Yes.

15 A. Yes, I was.

16 Q. You were? Were you part of the execution  
17 team prior to being the associate warden?

18 A. No.

19 Q. Okay. So only as the associate warden were  
20 you part of the execution team?

21 A. The interim deputy warden and the associate  
22 warden.

23 Q. Okay. And what was your role as part of the  
24 execution team as the associate warden?

25 A. To assist the warden.

1 Q. Okay. But were you on the IV team?

2 A. No.

3 Q. Were you an EMT?

4 A. No.

5 Q. Were you the executioner?

6 A. No.

7 Q. So your role -- your first role in an  
8 execution was as the associate warden?

9 A. As the interim deputy warden.

10 Q. Which is -- and it's now called the associate  
11 warden?

12 A. It's now called the associate warden.

13 Q. Okay. And your role then was to assist the  
14 warden?

15 A. Correct.

16 Q. Okay. And can you describe for me what you  
17 did to assist the warden in executions when you were  
18 the interim deputy warden?

19 A. To help prepare for executions.

20 Q. And what did you do to help prepare for  
21 executions?

22 A. From assembling the team, from assisting him  
23 in training purposes, and to be able to carry out  
24 his duties should I need to.

25 Q. Okay. And what did you do to prepare

1     yourself to carry out his duties should you need to?

2     A.       Studied the protocol, constantly rehearse.

3     Q.       And you -- I think you said you helped him  
4     assemble the team. How did you help him assemble  
5     the execution team?

6     A.       What I mean by "assemble," making sure that  
7     everyone has practiced regularly as we're supposed  
8     to, everyone is at practice when they're supposed to  
9     be, doing everything that the protocol prescribed us  
10    to do.

11    Q.       And do people apply to be part of the  
12    execution team?

13               MR. SUTHERLAND: Could you repeat that,  
14    Alex?

15               MR. KURSMAN: Yeah.

16    BY MR. KURSMAN:

17    Q.       Do people apply to be part of the execution  
18    team?

19    A.       They request to become part of the team.

20    Q.       They do. That's how -- do you ever ask  
21    somebody to be part of the execution team who hasn't  
22    requested to be part of the team?

23    A.       No.

24    Q.       It's always a request?

25    A.       Yes.



1 Q. So how does -- how does that work? Do you --  
2 does the warden and the associate warden send out a  
3 notice to everybody saying "request to be part of  
4 the execution"? Or do you just get a note from  
5 somebody saying, "I want to be part of the execution  
6 team"?

7 A. I can't speak for the associate warden. He  
8 has to speak for himself. But I do not send out any  
9 request or ask anyone to become part of the team.

10 Q. Okay. So people just -- how do they request  
11 to be part of the team?

12 A. The request is brought to me by mostly the  
13 associate warden of security.

14 Q. Okay. And when you were the deputy warden,  
15 which is now the associate warden, how did people  
16 request then to be part of the execution team?

17 A. At the time, best I could recall, when I was  
18 deputy warden, there weren't any requests because  
19 there were no positions to be filled.

20 Q. Okay. But now that you're the warden, there  
21 have been requests because there have been positions  
22 to be filled; is that what you're saying?

23 A. Correct.

24 Q. Okay. And has anybody requested to be part  
25 of the execution team that you or the associate

1 warden denied that request?

2 A. Yes.

3 Q. Okay. Why would you deny that request?

4 A. Once I interviewed the individual myself, and  
5 within my expertise of what I see and hear, I feel  
6 like that they wouldn't be a fit and they're denied.

7 Q. Okay. And why -- why wouldn't they be a fit  
8 to be part of the execution team?

9 A. Have you ever seen people that want to be a  
10 part of something because they feel like that --  
11 some have tried to use it for career advancement.  
12 Some of them take it lightly and it's something that  
13 I don't take lightly. Some not mature-minded enough  
14 based on what I see and observe, things of that  
15 sort.

16 Q. And how many -- how many people requested to  
17 be part of the execution team?

18 A. Over a period of time, I wouldn't know that  
19 number.

20 Q. Over the last -- since you were the warden.

21 A. That have requested?

22 Q. To be part of the execution team.

23 A. I don't know an exact number, but if I had to  
24 say a number -- I wouldn't know the exact number.

25 Q. Is it about 50? Is it about 10?

1 A. No, not 50. I would say around 10 maybe.

2 Q. Okay.

3 A. 10, 11, 12.

4 Q. And what openings did you have on the  
5 execution team? What positions were you trying to  
6 fill?

7 A. We don't fill certain positions. When you  
8 become part of the team, you learn every role in  
9 that team. You may be this today and you may have  
10 to do this tomorrow. We cross-train and require  
11 everybody to know what everybody do.

12 Q. Okay. So just so I'm clear, so the -- an IV  
13 team member could be an EMT member?

14 A. No --

15 Q. Okay.

16 A. -- no. I apologize. That's a different  
17 individual.

18 Q. Okay.

19 A. I was basically requiring -- specifying what  
20 we call our security team.

21 Q. Okay.

22 A. That's -- no, IV, that's a whole different  
23 team. That's a whole different thing.

24 Q. Okay. So maybe I'm confused and I'm not  
25 asking good enough questions. The IV team and the

1 EMTs, that whole team, the actual execution team  
2 with the executioner, have any of those roles been  
3 filled while you were warden?

4 A. Executioner, no. IV team, one.

5 Q. And why was the role of an IV team member  
6 filled while you were the warden?

7 A. Approximately I'd say three months ago we had  
8 a death, one of our EMTs, which is the IV team, and  
9 his position had to be filled.

10 Q. So the EMTs in the protocol are also the IV  
11 team members? Is that what you're saying?

12 A. Correct.

13 Q. Okay. How do you decide who's going to be --  
14 who's going to fill that role as EMT/IV team member?

15 A. The one position that was filled, we took a  
16 recommendation from the current IV team members,  
17 individuals were brought in, interviewed by myself  
18 with my supervisor present, credentials looked at,  
19 make sure everything was in order.

20 Q. And what credentials did you look at?

21 A. License, background check, recommendations  
22 from the person that recommended them. And then  
23 it's cleared with our legal team.

24 Q. And what was the last part? I apologize.

25 A. Cleared with our legal team.

1 Q. What license do you look at?

2 A. Medical.

3 Q. Okay. What type of medical license are we  
4 talking about?

5 A. Well, if they're an EMT or nurse, they would  
6 have to have a license in order to fulfill their job  
7 duties. And their license have to be in good  
8 standing.

9 Q. And are --

10 A. Medical license.

11 Q. I apologize. And these are all prison guards  
12 as well?

13 A. No.

14 Q. Okay. But they all work at TDOC?

15 A. No.

16 Q. Oh, they don't?

17 A. No.

18 Q. So the IV team members don't have to work at  
19 TDOC as their permanent job?

20 A. Correct.

21 Q. Okay. Just so I'm clear, some of -- is  
22 everybody on the IV team, are they not employees of  
23 TDOC outside of their role in the execution?

24 A. Correct.

25 Q. Okay. So you bring these people from outside

1 of TDOC to work on the execution?

2 A. Correct.

3 Q. Okay. Is that -- does that include the  
4 executioner?

5 A. No.

6 Q. Okay. But it includes the IV team?

7 A. Correct.

8 Q. And the EMTs, who you said are the IV team,  
9 right?

10 A. Correct.

11 Q. Okay. Does it include the recorder?

12 A. No.

13 Q. Okay. Does it include the drug procurer?

14 A. No.

15 Q. Okay. The person who procures the drugs also  
16 works at TDOC?

17 A. Correct.

18 Q. Okay. And are they paid to be part of the  
19 execution team?

20 A. "They"?

21 Q. They, I apologize. Is -- are the members of  
22 the IV team paid to be part of each execution?

23 A. They're paid to perform a duty, yes.

24 Q. Right. And how much are they paid?

25 A. That I don't know off the top of my head.

1 Q. Okay. But do you have to -- as the warden of  
2 Riverbend, do you have to approve whatever they're  
3 paid?

4 A. No.

5 Q. Okay. Who does that?

6 MR. SUTHERLAND: I'm going to object  
7 under the protective order and instruct the warden  
8 not to answer who pays the people that participate  
9 in an execution.

10 BY MR. KURSMAN:

11 Q. Okay. Are they paid for coming to TDOC for  
12 trainings?

13 A. They are.

14 Q. Are they -- are they paid for reading the  
15 protocol on their own?

16 A. You have to define reading it on their own.

17 Q. Sure. So what I mean is there's the actual  
18 executions. There's scheduled trainings with the  
19 executioners.

20 Do the IV team or the executioner read and  
21 learn the protocol when they're not in these  
22 trainings?

23 A. No.

24 Q. Okay. So the only time that they're trained  
25 on the protocol is when they're at these scheduled

1 trainings?

2 A. Correct.

3 Q. Okay. Do they bring the protocols home with  
4 them, do you know?

5 A. No.

6 Q. Okay. So they leave the protocol, which I'll  
7 show you in a minute, but they leave the protocol at  
8 TDOC?

9 A. At the facility.

10 Q. At the facility.

11 A. Correct.

12 Q. Okay. So the group of people who come in who  
13 aren't employees of TDOC, and these are the members  
14 of the execution team that we're talking about now,  
15 they come to these trainings and they're given the  
16 protocol at the trainings? Is that how it works?

17 A. When you say "members of the execution team,"  
18 now you're including everyone.

19 Q. Yeah, I apologize. When I'm talking right  
20 now and saying "members of the execution team," all  
21 I'm talking about is the IV team and the EMTs, who  
22 are one and the same. They come and they're just  
23 given the protocol at that time?

24 A. Correct.

25 Q. Okay. Is the physician there as well who --



1 who works on the -- with the executioners?

2 A. Not every time.

3 Q. Okay. Do you know how much they're paid  
4 hourly?

5 A. I do not.

6 Q. Okay. And are you the person who's  
7 responsible for training the EMTs/the IV team  
8 members for an execution?

9 A. Define "training."

10 Q. Leading these scheduled trainings.

11 A. I do lead the trainings.

12 Q. Do you make sure that they understand what is  
13 said in the protocol?

14 A. Yes.

15 Q. Okay. Is there a reason that you don't give  
16 them the protocol to bring home with them?

17 A. I don't give anyone the protocol to take home  
18 with them.

19 Q. And what is the reason for that?

20 A. I keep it as confidential as possible.

21 Q. Okay. Why?

22 A. I just don't want it in anyone's hands  
23 outside the facility.

24 Q. Okay. Is the -- are you aware that the  
25 protocol has been filed in federal district court --

1 A. I am.

2 Q. -- so it's a public document?

3 A. I am.

4 Q. So is there a reason that you wouldn't want  
5 the people who are conducting the executions to know  
6 exactly what it says?

7 A. It's not that I don't want them to know what  
8 it says, I just don't let them leave the facility  
9 with it.

10 Q. And do you think they have a thorough  
11 understanding of the protocol, everybody on --

12 MR. SUTHERLAND: Object to the form.

13 BY MR. KURSMAN:

14 Q. -- the execution team?

15 MR. SUTHERLAND: You can answer.

16 THE WITNESS: I don't know what they're  
17 thinking -- they have to think for themselves -- but  
18 I would hope that they do.

19 BY MR. KURSMAN:

20 Q. Okay. Do you give them a test on the  
21 protocol?

22 A. I do not.

23 Q. Does anybody test them on the protocol?

24 A. That I would not know.

25 Q. Okay. You wouldn't know whether anybody

1 tests the execution team on the protocol?

2 A. I wouldn't -- I would not know that, but...

3 (WHEREUPON, the above-mentioned  
4 document was presented, previously marked as  
5 Exhibit Number 1.)

6 BY MR. KURSMAN:

7 Q. Okay. Let's turn to Exhibit 1, which is in  
8 front of you in that packet.

9 And have you seen Exhibit 1 before?

10 A. I'm sorry?

11 Q. Have you seen Exhibit 1 before?

12 A. I have.

13 Q. Okay. And is this the current TDOC  
14 procedures for planning and carrying out the  
15 execution of prisoners?

16 A. It is.

17 Q. Okay. And if I refer to it as "the  
18 protocol," will you understand what I'm talking  
19 about?

20 A. I will.

21 Q. Okay. How are you aware of the protocol?

22 A. I'm aware of the protocol -- when I first  
23 became part of the execution team, I had to review  
24 it as well.

25 Q. And is that when you were what is now

1 referred to as associate warden?

2 A. Correct.

3 Q. Okay. And when you were in that position  
4 that I'll call associate warden, did you attend all  
5 of the trainings?

6 A. I did.

7 Q. Okay. And did the warden at that time attend  
8 all of the trainings?

9 A. Best of my recollection, yes.

10 Q. Okay. And now that you're the warden, do you  
11 attend all the trainings?

12 A. Best of my recollection, I've attended all  
13 except for two.

14 Q. Which two did you not attend?

15 A. I had COVID.

16 Q. Okay.

17 A. And my sister passed.

18 Q. I'm sorry to hear that.

19 When you weren't able to attend those  
20 trainings, did the associate warden take over in  
21 your duties?

22 A. Yes, he did.

23 Q. Okay. So could we turn to -- let me ask you  
24 this: How long has this current protocol been in  
25 place, if you know?

1 A. This current one has a revision date, lower  
2 left, July 5th, 2018.

3 Q. And were you the warden at that time?

4 A. I was.

5 Q. So you were the warden for a protocol before  
6 this and also for the new protocol?

7 A. Correct.

8 Q. Okay. Did you help create this protocol?

9 A. Did not.

10 Q. Okay. You didn't write any of the sections  
11 in this protocol?

12 A. None.

13 Q. Okay. Did anybody come to you and say,  
14 "Warden Mays, does this make sense?"

15 A. No.

16 Q. Okay. So you didn't give your stamp of  
17 approval on any section of the protocol?

18 A. No.

19 Q. Okay. Do you know if the instructions in the  
20 protocol are mandatory?

21 A. I will say it is our protocol and that's what  
22 we go by.

23 Q. Okay. So does that -- is that a "yes," that  
24 they are mandatory?

25 A. That is a "yes."

1 Q. Okay. So if you wanted to deviate from the  
2 protocol, what would you do?

3 A. I don't deviate.

4 Q. Okay. Can anybody decide to deviate from the  
5 protocol?

6 A. That I would not know.

7 Q. Could the commissioner deviate from the  
8 protocol?

9 A. That I would not know.

10 Q. Okay.

11 MR. SUTHERLAND: Object to the form.

12 BY MR. KURSMAN:

13 Q. Can the executioner deviate from the  
14 protocol?

15 MR. SUTHERLAND: Object to the form.

16 BY MR. KURSMAN:

17 Q. You can answer.

18 A. No.

19 Q. Okay. Can the IV team deviate from the  
20 protocol?

21 MR. SUTHERLAND: Object to the form.

22 THE WITNESS: No.

23 BY MR. KURSMAN:

24 Q. Can the drug procurer deviate from the  
25 protocol?

1 MR. SUTHERLAND: Object to the form.

2 THE WITNESS: That I would not know.

3 BY MR. KURSMAN:

4 Q. Okay. And what would you do as the warden if  
5 someone deviated from the protocol?

6 A. When I have jurisdiction at the site doing  
7 training purposes, doing an actual procedure, I'm  
8 there. And if I observe a deviation during  
9 practices, I will probably make mention afterwards.  
10 During actual situations, and thank God we haven't  
11 had to do that, I would call it right then.

12 Q. And what if there's a deviation during an  
13 actual execution? What would you do?

14 A. I don't know, I've never had to do it.

15 Q. Okay. So while you've been warden, have you  
16 ever noticed a deviation from the protocol?

17 A. In what --

18 MR. SUTHERLAND: Object to the form.

19 BY MR. KURSMAN:

20 Q. You can answer.

21 A. In what form?

22 Q. Have you ever noticed the executioner deviate  
23 from the protocol?

24 A. I haven't.

25 Q. Have you ever noticed the IV team deviate

1 from the protocol?

2 A. No.

3 Q. Have you ever noticed the drug procurer  
4 deviate from the protocol?

5 A. That I would not know.

6 Q. Okay. So you have never noticed the drug  
7 procurer deviating from the protocol?

8 A. That I would not know whether a deviation was  
9 there or not.

10 Q. My question is only have you noticed it, not  
11 whether the drug procurer has.

12 A. No.

13 Q. Have you noticed?

14 A. No.

15 Q. Okay. And if somebody decided that a  
16 deviation needed to happen in the protocol to go  
17 forward with an execution or to store things or to  
18 make sure that something went smoothly with the  
19 execution procedure, who would they go to to say,  
20 "We need to deviate from this protocol?"

21 MR. SUTHERLAND: I'm going to object to  
22 the form and object to the identification, I mean,  
23 within the question.

24 BY MR. KURSMAN:

25 Q. And I apologize. Without revealing any



1 identities, who would they go to to ask to deviate  
2 from the protocol?

3 MR. SUTHERLAND: Objection, form.

4 You can answer.

5 THE WITNESS: It would be above me.

6 BY MR. KURSMAN:

7 Q. Okay.

8 A. That I would not know.

9 Q. And if that person above you gave someone the  
10 approval to deviate from the protocol, do you think  
11 they would notify you that they were going to  
12 allow --

13 MR. SUTHERLAND: Objection to the form.

14 BY MR. KURSMAN:

15 Q. -- a deviation from the protocol?

16 A. Yes.

17 Q. Okay. Do you know what was relied on to  
18 create the protocol?

19 A. No.

20 Q. Do you know who created the protocol?

21 MR. SUTHERLAND: I'm going to object to  
22 the identities of people other than the named  
23 defendants.

24 BY MR. KURSMAN:

25 Q. And you can answer without revealing any

1 identities. And it was just a yes or no question --

2 A. No.

3 Q. -- what -- okay.

4 And I think you said this before, but were  
5 you asked to consult about the creation of the  
6 protocol? Meaning did they ask you your opinion --  
7 the people that created this protocol, did they ask  
8 you your opinion about any section in the protocol?

9 A. No.

10 Q. Do you think, as the warden, you should have  
11 been asked --

12 MR. SUTHERLAND: Object to the form.

13 BY MR. KURSMAN:

14 Q. -- about things within the protocol?

15 A. It is my duty to carry it out, not to say how  
16 it is to be carried out. And that would be a no.

17 Q. Okay. So in front of you you have Exhibit 1.  
18 Do you want to take a minute to look through it  
19 today?

20 A. I'm good.

21 Q. Okay. And when was the last time you  
22 reviewed this document?

23 A. 12, 14 hours ago.

24 Q. Okay. And did you read the full protocol  
25 front to back?

1 A. No.

2 Q. Okay. What did you read 12 to 14 hours ago  
3 when you were looking at the protocol?

4 A. Just certain sections of it, none to be in  
5 particular, just glanced through it.

6 Q. Okay. Which sections do you remember looking  
7 at?

8 A. It would begin with page 1, and, like I said,  
9 I can't recall. I just thumbed through it.  
10 Wherever I landed, I just read it.

11 Q. Okay. And do you know why you did that?

12 A. It's always good to refresh.

13 Q. Have you ever read the entire protocol in its  
14 entirety?

15 A. I have.

16 Q. When was -- when was the last time you did  
17 that?

18 A. I can't recall exact date. It was probably  
19 sometime this year.

20 Q. Okay. And when reading the protocol, did you  
21 ever have any questions about what things meant?

22 A. It's pretty clear.

23 Q. So is that a "no"?

24 A. That's a "no."

25 Q. Okay.

1 A. Sorry.

2 Q. And did you ever take any notes on the  
3 protocol and ask questions to any of the  
4 executioners about what things may mean in the  
5 protocol?

6 A. Take notes and ask the executioner?

7 Q. Yeah, meaning -- and I apologize. It's a  
8 poorly worded question. Meaning did you ever look  
9 at the protocol and say, "I don't understand what  
10 this term means. Let me ask the execution team what  
11 they think it means"?

12 A. We may ask questions even though we  
13 understand. We do confer with each other.

14 Q. Okay. So describe to me how you would confer  
15 with each other even though you do understand.

16 A. Sometimes me as a person, myself, only  
17 speaking about myself, I may know something but just  
18 ask someone just to see if I can get a clearer  
19 understanding, even though I already understand what  
20 it says.

21 Q. And you've done that in regards to this  
22 protocol?

23 A. Not -- yes, parts of it, not all of it.

24 Q. Do you remember which parts of that you've  
25 done to this protocol?

1 A. I do not. That's a "no."

2 Q. Has there ever been a time where your  
3 understanding of the protocol was different from  
4 someone else's understanding of the protocol?

5 A. May have been. That's a "yes."

6 Q. Okay. Do you remember when?

7 A. I do not.

8 Q. Do you remember what provisions in the  
9 protocol where your understanding was different than  
10 someone else's?

11 A. Not -- that's a "no."

12 Q. Okay. And what would you do if your  
13 understanding of the protocol was different from  
14 somebody else's understanding of the protocol? How  
15 would you resolve those differences?

16 A. Discussing an understanding.

17 Q. Okay. Would you bring it to the people who  
18 created the protocol?

19 A. Yes.

20 Q. Have you done that?

21 A. No.

22 Q. Okay. Have you asked the people who created  
23 the protocol to define any terms in the protocol?

24 A. No.

25 Q. Okay. Has any members of the execution

1 team -- and when I say the execution team, I mean  
2 the entire execution team now. Has any members of  
3 the execution team ever went to the creators of the  
4 protocol to ask them to define terms in the  
5 protocol?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: I can't speak about  
8 members of the execution team, what they would do  
9 outside of my knowledge, so I guess that would be a  
10 "no."

11 BY MR. KURSMAN:

12 Q. If any members of the execution team had  
13 questions about the protocol, would they go to you?

14 A. They --

15 MR. SUTHERLAND: Objection to the form.

16 You can answer.

17 THE WITNESS: They should.

18 BY MR. KURSMAN:

19 Q. Okay. And then would it be your  
20 responsibility to go to people higher up than you?

21 A. Yes.

22 Q. Okay. I'm just trying to get a clear  
23 understanding of how the prison operations work.  
24 Does it work that people under you who report to you  
25 aren't supposed to go over your head to get answers?

1 A. Yes.

2 Q. Okay. Okay. Do you know who authorized the  
3 State to conduct executions under this protocol?

4 MR. SUTHERLAND: Yeah, I'm going to  
5 object to the identity or any person that's not a  
6 named party under the protective order.

7 THE WITNESS: Define your question,  
8 please.

9 BY MR. KURSMAN:

10 Q. Sure. And I'm sorry. Meaning do you know if  
11 this was authorized by the governor? If this was  
12 authorized by TDOC's general counsel? Just in  
13 general terms, when you got this protocol, without  
14 identifying any names, do you know where this  
15 protocol came from?

16 A. I do not, no.

17 Q. Okay. And do you know if the State is  
18 allowed to conduct executions using any other  
19 methods?

20 A. Yes.

21 Q. Okay. And what are those methods?

22 A. Other than lethal injection would be  
23 electrocution.

24 Q. Okay. How about other than the current  
25 lethal injection method, the three drugs prescribed

1 by this protocol?

2 A. Not that I know of.

3 Q. Okay. And have you received any other  
4 trainings for executions aside from what is in this  
5 protocol?

6 A. Training, no.

7 Q. Do you do trainings for electrocutions?

8 A. Yes.

9 Q. Okay. And is the same team that conducts the  
10 trainings for the lethal injection protocol, is that  
11 the same team that is involved in the electrocution  
12 protocol?

13 A. Yes.

14 Q. Okay. Is it all the same people?

15 A. Yes.

16 Q. Okay. Are the members of the IV team also  
17 involved in the electrocution protocol?

18 A. No.

19 Q. Okay. So who is part of the electrocution  
20 protocol, without disclosing any names? All I'm  
21 looking for is titles.

22 A. Everyone, to exclude the IV team.

23 Q. Okay. And do you -- does the execution team  
24 ever practice for a one-drug protocol?

25 A. No.



1 Q. Okay. Have you ever attended any one-drug  
2 protocol trainings?

3 A. No.

4 Q. Okay. So as your time as associate warden  
5 and warden, you've only attended execution protocols  
6 for the three-drug current execution protocol --  
7 execution trainings? I'm sorry. Let me -- let me  
8 ask that question again.

9 As your time at TDOC as both the associate  
10 warden and the warden, has every training that  
11 you've attended only been for the current  
12 three-drug execution protocol?

13 A. To include electrocution?

14 Q. Oh, I apologize. And electrocution as well?

15 A. Correct.

16 Q. Okay. So let's go to page 6 in the protocol.  
17 Let me know when you get there.

18 And do you -- do you see at the very bottom,  
19 the last two sentences say, "This manual explains  
20 the procedures for lethal injection. It will be  
21 reviewed annually or as needed by a designated  
22 panel."

23 Do you see that?

24 A. I do.

25 Q. Are you on that panel?

1 A. No.

2 Q. Okay. Without disclosing any names, do you  
3 know who's on that panel?

4 A. No.

5 Q. Okay. Do you know if the protocol has been  
6 reviewed by anyone since 2018?

7 A. For revision purposes? Or just reviewed?

8 Q. For revision purposes.

9 A. No.

10 Q. Okay. How about do you know if the protocol  
11 has been reviewed by this panel that we're  
12 discussing right now? Do you know if the protocol  
13 has been reviewed by this panel since 2018?

14 A. For revision or just reviewed?

15 Q. Just reviewed.

16 A. I wouldn't know that.

17 Q. Okay. Let's go to page 1 of the -- turn back  
18 to page 1 of Exhibit 1. And let me know when you  
19 get there.

20 A. Page 1 of...

21 Q. Exhibit 1, so just a few pages back.

22 A. Okay.

23 Q. Do you see at the very bottom it says -- the  
24 last paragraph says, "It will be used as a guideline  
25 for the Warden to assure that operational functions

1 are properly planned with the staff who have  
2 designated responsibilities in performing a  
3 judicially ordered execution by lethal injection."

4 What does that paragraph mean to you?

5 A. That this manual, this protocol, is used as a  
6 guideline for us to carry out an execution  
7 effectively.

8 Q. And what does the term "guideline" mean to  
9 you?

10 A. "Guideline" to me means they give you  
11 something to go by.

12 Q. And you would have to follow that guideline?  
13 Is that -- is that what it means?

14 A. Correct.

15 Q. Okay. And do you see that it says, "For the  
16 warden to assure that operational functions are  
17 properly planned with the staff"?

18 A. I do see that.

19 Q. How do you ensure that operational functions  
20 are properly planned?

21 A. Very carefully, practices, rehearsals.

22 Q. And are you the one who's overseeing the  
23 execution team in all of the practices aside from  
24 the two that we just mentioned?

25 A. I am.

1 Q. Okay. And are you the one who is overseeing  
2 the entire execution team during an actual  
3 execution?

4 A. I am.

5 Q. Okay. And are -- so you're the one to ensure  
6 that the operational functions are followed in this  
7 protocol?

8 A. Correct.

9 Q. Okay. Does anyone else oversee the execution  
10 team aside from you?

11 A. Define "oversee."

12 Q. Does anybody else monitor the execution team  
13 to make sure they're doing what the protocol  
14 instructs them to do?

15 MR. SUTHERLAND: He can answer if  
16 there's a title, but without identifying anyone, if  
17 there is a person.

18 THE WITNESS: You talking about actual  
19 rehearsal?

20 BY MR. KURSMAN:

21 Q. I'm talking about both the rehearsal and an  
22 execution. And I apologize for not being clear.  
23 Any time I'm asking for a name, I don't mean the  
24 actual name, I just want the title --

25 A. I understand.

1 Q. -- in the execution protocol.

2 MR. SUTHERLAND: Could you repeat the  
3 question, Alex?

4 MR. KURSMAN: Sure.

5 BY MR. KURSMAN:

6 Q. Does anyone else oversee the execution team  
7 either during a rehearsal or during an execution,  
8 aside from you?

9 A. That would be a "yes."

10 Q. Okay. And by their title, who would that be?

11 A. That would be, by the title, commissioner.

12 Q. Okay. So is the commissioner also in the  
13 execution trainings?

14 A. Yes.

15 Q. Okay. Has he attended every training as  
16 well?

17 A. No.

18 Q. Okay. How many trainings would you say he  
19 attends?

20 A. That I wouldn't know.

21 Q. Okay. But you are at those trainings too,  
22 right?

23 A. Other than the two I missed.

24 Q. Right. Do you think he's at at least half of  
25 the trainings?

1 A. That I wouldn't know.

2 Q. Okay. Is he at the executions?

3 A. Yes.

4 Q. Okay. And does he monitor you as well to  
5 make sure you're doing your job?

6 A. Yes.

7 Q. Okay. So you monitor the entire execution  
8 team that's below you. He then monitors the entire  
9 execution team as well but also includes you in that  
10 monitoring --

11 A. Correct.

12 Q. -- is that right?

13 A. Yes.

14 Q. Okay. Now, let's go to the top paragraph  
15 of -- still on page 1. And in the third line down  
16 it says -- talking about the protocol it says, "It  
17 contains a detailed listing of some of the duties  
18 and responsibilities of certain key departmental  
19 personnel."

20 Do you see that?

21 A. I do.

22 Q. Okay. Are there any instructions that aren't  
23 included in the protocol for the execution team?

24 A. Not that I'm aware of, no.

25 Q. Okay. Do you see it says, "Some of the

1 duties"?

2 A. I do.

3 Q. Okay. Why doesn't it contain a detailed  
4 listing of all of their duties?

5 A. That I wouldn't know.

6 Q. Okay. Are there any duties that any member  
7 of the execution team carries out that you know of  
8 that's not spelled out in the protocol?

9 A. No.

10 Q. Okay. And I think you said before that you  
11 aren't aware of any other instructions for members  
12 of the protocol to carry out an execution aside from  
13 what's contained in the protocol, correct?

14 A. Correct.

15 Q. Okay. So let's go to page 8 of Exhibit 1.

16 And do you see it says at the top

17 "Definitions"?

18 A. Correct.

19 Q. Okay. And then do you see it lists all the  
20 members of the execution team? The sixth term.

21 A. Six down?

22 Q. Yeah.

23 A. Yes.

24 Q. Okay. Without identifying any of these  
25 people, do you know who all these people are?

1 A. Yes.

2 Q. Okay. And is each role always filled by the  
3 same individual?

4 A. No.

5 Q. Okay. And I think you described this before,  
6 but can you tell me exactly how that works that  
7 individuals perform different roles at different  
8 practices or different executions?

9 A. Escort officers, the last one in the  
10 paragraph, escort officers may be different the next  
11 practice than it was the practice before that were  
12 possibly cross-trained. Extraction team may vary,  
13 cross-train. And other than myself, allow the  
14 associate warden of security to train in what I do,  
15 that's basically it.

16 Q. And when you say the extraction team or the  
17 escort officers may change, do you just mean they  
18 may -- the same people, like an escort officer may  
19 become an extraction officer? Or do you mean that  
20 people outside of the execution team may come in?

21 A. No, the first.

22 Q. Okay. Okay. Do you know if every execution  
23 team member, without identifying who they are, has  
24 previous execution experience?

25 A. That I wouldn't know.



1 Q. Okay. How about the most recent IV team  
2 member that was recently hired? Does that person  
3 have previous execution experience?  
4 A. That I wouldn't know.  
5 Q. Did you hire that person?  
6 A. I did.  
7 Q. Okay. And you said you checked that person's  
8 background?  
9 A. I did.  
10 Q. And you interviewed that person?  
11 A. I did.  
12 Q. You didn't ask them whether they had prior  
13 execution experience?  
14 A. I did.  
15 Q. And did they tell you whether they did?  
16 A. They did not.  
17 Q. Okay. They -- you asked them whether they  
18 had prior execution experience?  
19 A. Correct.  
20 Q. And what was their answer?  
21 A. They did not.  
22 Q. Oh, they do not. Okay.  
23 So this member of the execution team, at  
24 least one member, one IV team member, has no prior  
25 execution experience?

1 A. According to her verbal testimony.

2 Q. Okay. Does any other member of the execution  
3 team not have prior execution experience?

4 A. We have new members since the last execution  
5 that wasn't involved in one.

6 Q. Okay. How many new members do you have?

7 A. Probably about three to four members.

8 Q. And these are members of the extraction team  
9 or of the escort team?

10 A. Correct.

11 Q. Okay. And why do you have new members?

12 A. Members have moved on.

13 Q. Okay. Meaning they no longer work at TDOC?

14 A. They no longer work at TDOC or no longer want  
15 to be a part of the team.

16 Q. Okay. And do you offer mental health  
17 counseling to these members of the execution team?

18 A. Yes.

19 Q. Okay. And do they take that counseling?

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: To the best of my  
22 recollection, my memory, I am not aware of any that  
23 have accepted any counseling session.

24 BY MR. KURSMAN:

25 Q. Okay. And have you accepted any counseling

1 sessions for your role in executions?

2 A. No.

3 Q. Okay. Why do you think no one from the  
4 execution team has accepted any mental health  
5 counseling for their role in the executions?

6 MR. SUTHERLAND: Objection to the form.

7 You can answer.

8 THE WITNESS: I would say within the  
9 facility that we offer no one have because I  
10 probably would know, unless they wanted to keep it  
11 confidential within themselves. Outside the  
12 facility, I would not know. But I don't know of  
13 anyone that have asked or received any mental health  
14 counseling.

15 BY MR. KURSMAN:

16 Q. Okay. My question, though, is why? Why do  
17 you think everybody has declined?

18 MR. SUTHERLAND: Same objection.

19 THE WITNESS: That I wouldn't know.

20 BY MR. KURSMAN:

21 Q. Okay. Let's turn to page 10 of the protocol.

22 And do you see this is a blueprint of what  
23 appears to be rooms of the execution chamber and  
24 then rooms surrounding the execution chamber?

25 A. Yes.

1 Q. Is that how you would describe this  
2 blueprint?

3 A. Yes.

4 Q. Okay. And have you seen this blueprint  
5 before today?

6 A. Yes.

7 Q. Okay. When was -- when was the last time you  
8 reviewed this?

9 A. The last time that I reviewed this layout?

10 Q. The blueprint, yep.

11 A. I've glanced at it, but just studied it?  
12 Probably yesterday.

13 Q. Okay. And can you explain to me who is where  
14 during an execution? Meaning without identifying  
15 any names, just the role of each person during an  
16 execution, where they are in each of these rooms.

17 A. Excuse me. And when you say "during the  
18 execution," there's different points.

19 Q. Right. So could you go through that entire  
20 thing?

21 A. The preparation?

22 Q. All of it. So we could start with  
23 preparation, then bringing the inmate in, then  
24 preparing the inmate for the IVs, then injecting the  
25 drugs, just one by one if you could let me know

1 where everybody is and where everybody goes.

2 A. Okay. I will start with myself and associate  
3 warden of security, prior to -- and this will take a  
4 while.

5 Q. Sure, take your time.

6 A. Prior to -- I'll try to make it short --  
7 myself, the associate warden of security, one of  
8 the -- what we call the gurney persons, one of the  
9 escort persons will be in the gurney room -- that's  
10 where you see the bed -- at the 7:00 hour. We'll  
11 start from there.

12 You see the execution chamber sallyport?  
13 Okay, if you leave the gurney room, go through the  
14 left door, that's an execution chamber sallyport.  
15 Once you enter that, there's a door to the right.  
16 And you enter a room that is not labeled. That's  
17 where the rest of the extraction team are located  
18 at the 7:00 hour.

19 Where you see the lethal injection  
20 executioner's room, that will be right to the  
21 gurney room, the door that swings inward. That's  
22 where the IV team and the assistant commissioner is  
23 located, the doctor is located.

24 Inside that lethal injection execution room,  
25 if you go right and the door that swings inward

1 where that arrow actually spells out the lethal  
2 injection execution room. That's where the  
3 executioner is located.

4 The condemned -- which you probably know  
5 that, if you go into the death watch area to your  
6 extreme left, the death watch area, that broad  
7 area, Cell 1 is where the condemned will be  
8 located.

9 Death watch area, the wide area, the room to  
10 the left, which is the control room, if you can see  
11 that, the door swings inward. That's where the  
12 recorder is located.

13 That's where the -- what we call our IT  
14 team, but they defined them as ITS, they're located  
15 in that room where the cameras, monitors, controls  
16 are located in that room.

17 The death watch team is also in the death  
18 watch area, be two correctional officers, one  
19 lieutenant.

20 The facility maintenance supervisor, during  
21 a lethal injection, will be located inside that  
22 room as well, that room being the death watch  
23 control room. During an electrocution procedure,  
24 that individual will actually be inside the  
25 execution chamber.

1 I think that gets everybody.

2 Q. Okay. And once the execution begins to  
3 proceed, then where does everybody go?

4 A. Proceed as in...?

5 Q. Meaning you have the -- at this point, as I  
6 understand it, the inmate is still in Cell 1?

7 A. Okay.

8 Q. Okay. What about once the inmate is taken  
9 from Cell 1? Well, let's start with this. Where  
10 does the inmate go after he's in Cell 1?

11 A. 7:00 hour, myself, the AW, and the gurney man  
12 would leave the execution chamber, proceed through  
13 execution chamber sallyport, proceed into death  
14 watch area with the extraction team following  
15 behind. We proceed into that chamber. I proceed to  
16 Cell 1. The condemned is removed from Cell 1,  
17 placed on the gurney in that area, rolled from that  
18 area back into the execution chamber.

19 Q. Okay. So let me stop you there. When you  
20 say he's placed on the gurney in that area, does  
21 that mean he's placed on the gurney in the death  
22 watch area?

23 A. That is correct.

24 Q. Okay. And who rolls him back into the  
25 execution chamber?

1 A. The same individual that pushes the gurney in  
2 from the execution chamber.

3 Q. And is he strapped down in the death watch  
4 area or is he strapped down in the execution  
5 chamber?

6 A. He is strapped down in the death watch area.

7 Q. Okay. And is he strapped down any further  
8 once he gets to the execution chamber or is -- are  
9 the straps fully tightened in the death watch area?

10 A. They are -- they are tightened in the death  
11 watch area. He's strapped with restraints, leg  
12 restraints, cuffs still on him at the time. Once he  
13 leaves that area and get to the execution chamber,  
14 the leg irons and restraints are removed and the  
15 straps are checked again to make sure that he is  
16 secured.

17 Q. Okay. And once he gets to the execution  
18 chamber, who is in the execution chamber with him?

19 A. Once he gets to the execution chamber,  
20 myself, the associate warden of security, the  
21 extraction team would be in that area at that time.

22 Q. Okay. And once you're all in that area, what  
23 happens next?

24 A. Of course, all the individuals that I did not  
25 make mention of, his attorney, they can come in, and



1 things of that sort.

2 Q. They can come into the execution chamber?

3 A. At that period.

4 Q. Okay. While the inmate is strapped to the  
5 gurney, the inmate's attorneys can come into the  
6 execution chamber at that period?

7 A. Attorney.

8 Q. Attorney?

9 A. Uh-huh.

10 Q. Okay. Okay. And then what is the next step  
11 in the execution procedure?

12 A. The next step, once the restraints are  
13 removed, restraints being leg irons and handcuffs,  
14 of course, the curtains and blinds are pulled, the  
15 IV team would be brought into the room.

16 Q. And who is now in the room now that the IV  
17 team is in there?

18 A. It's the IV -- myself, the associate warden  
19 of security, IV team, one person from the extraction  
20 team.

21 Q. And what does the IV team do while they're in  
22 the execution chamber?

23 A. They come in to make preparation to insert  
24 the IV.

25 Q. Okay. And do you oversee the IV team at this

1 point?

2 A. I don't oversee. I'm there, but I'm  
3 watching.

4 Q. Okay. And what are you watching for?

5 A. For anything.

6 Q. Okay. What does "anything" mean?

7 A. I watch -- I watch a lot the emotions of the  
8 people in the room, the emotions of the condemned,  
9 the -- I watch everything, how they go about  
10 applying the IV. I just watch.

11 Q. Okay. And would you know if they were  
12 establishing an IV site that deviated from the  
13 protocol?

14 A. I would not know.

15 MR. SUTHERLAND: Objection to the form.

16 BY MR. KURSMAN:

17 Q. Okay.

18 MR. SUTHERLAND: You can answer.

19 BY MR. KURSMAN:

20 Q. Now, once they establish that IV site, where  
21 does the IV team go?

22 A. Once they establish that IV site, they leave  
23 and go back to the lethal -- go back into the room  
24 where they left.

25 Q. Okay. And -- but they're -- at their point

1 they're in the lethal injection executioner's room?

2 A. Not in the room, they're in that area.

3 Q. Okay. Right. Okay. And who is now in the  
4 execution chamber?

5 A. Once the IV is inserted, the only person in  
6 there is myself and the associate warden of  
7 security.

8 Q. Okay. And at this point are the blinds  
9 raised or are they still drawn?

10 A. They're still -- they're still drawn.

11 Q. Okay. And then once the IV is established,  
12 what is the next thing that is pushed into the IV?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Other things have taken  
15 place before -- you're talking about pushing,  
16 inserting chemicals?

17 BY MR. KURSMAN:

18 Q. Sure, yes.

19 A. Okay. Well, once everyone leaves the room  
20 besides myself and the associate warden of security,  
21 we ensure that audio is good, we ensure that  
22 individuals that have left that room that has a  
23 right to view are in place, that communication is  
24 fed to my associate warden of security. Once that  
25 is in place, then he and I at the time raise the

1 blinds and open the curtains.

2 Q. Okay. So let me stop you there. So where's  
3 the physician at this point?

4 A. The physician is still in the room with the  
5 IV team.

6 Q. Oh, the physician is not in the garage yet?

7 A. Well, the garage is the outside area and the  
8 protocol says the physician will be in the garage,  
9 but the garage area -- you see that door goes out?  
10 He may or may not be in the garage or he may be in  
11 the room, either one.

12 Q. Okay. So the -- so there's an inmate on the  
13 gurney. The IV lines are established. The  
14 executioner, is he -- he's in the room with the  
15 little arrow at this point?

16 A. The lethal injection executioner's room.

17 Q. Right. And the IV team is in this room that  
18 doesn't actually have a name for it, with all these  
19 doors going in; is that right?

20 A. Correct.

21 Q. Okay. And the physician is either in the  
22 garage or he's in this room that doesn't have a  
23 name?

24 A. Yes.

25 Q. Okay. Can you see into the execution chamber

1 from this room that doesn't have a name?

2 A. No.

3 Q. Okay. Can you see into the execution chamber  
4 from the garage?

5 A. No.

6 Q. Okay. Can you see into the execution chamber  
7 from the lethal injection executioner's room?

8 A. Yes.

9 Q. Okay. Are there video monitors in this room  
10 that doesn't have a name?

11 A. Repeat.

12 Q. Are there TVs in this room that doesn't have  
13 a name, or are the --

14 A. No.

15 Q. Okay. So what is the IV team doing in this  
16 room that doesn't have a name --

17 MR. SUTHERLAND: Objection to the form.

18 BY MR. KURSMAN:

19 Q. -- at this point?

20 A. They're just sitting.

21 Q. Okay. And what is the physician doing in the  
22 garage or either in this room that doesn't have a  
23 name?

24 MR. SUTHERLAND: Objection to the form.

25 You can answer.

1 THE WITNESS: Either sitting or  
2 standing, one of the two.

3 BY MR. KURSMAN:

4 Q. Okay. And what is the executioner doing at  
5 this point?

6 MR. SUTHERLAND: Objection to the form.  
7 You can answer.

8 THE WITNESS: The executioner is  
9 monitoring.

10 BY MR. KURSMAN:

11 Q. Monitoring what?

12 A. He monitors -- at different points, depending  
13 on what -- he's monitoring the condemned, he's  
14 monitoring the IV lines, he's watching me, and the  
15 whole nine yards.

16 Q. Okay. And can you see the executioner?

17 A. I cannot.

18 Q. So it is just a -- do you only see, like, a  
19 mirror on his window?

20 A. Yes.

21 Q. Okay. So he can see out but you can't see  
22 in?

23 A. Yes.

24 Q. Okay. Can you see out to any room at this  
25 point when you're in the execution chamber?

1 A. Once the blinds and curtains are raised and  
2 pulled, I can see into -- to other rooms.

3 Q. Okay. So what is the -- now that it's only  
4 you and the associate warden in the execution  
5 chamber with the inmate on the gurney, what is the  
6 next step in the execution process?

7 A. Once the curtains is pulled and the blinds  
8 are raised, from that same room, I call the  
9 commissioner to make sure that there hadn't been any  
10 reprieves. Once the commissioner give me  
11 directions, then I approach the gurney, ask the  
12 condemned for last words. Once the condemned give  
13 his last words, then the next process proceeds.

14 Q. And describe that next process.

15 A. Once the condemned has given his last words,  
16 then I signal the executioner to proceed with  
17 chemicals.

18 Q. Okay. And which chemicals do you signal him  
19 to proceed with?

20 A. The ones that listed in the protocol, the  
21 three.

22 Q. Okay.

23 A. Begin with the midazolam.

24 Q. Okay. So you signal for the executioner to  
25 proceed with the midazolam. And what happens next?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: He proceeds.

3 BY MR. KURSMAN:

4 Q. Okay. And when you say "he proceeds," what  
5 does that mean?

6 A. That means he begin to insert midazolam into  
7 the lines.

8 Q. Okay. How do you know when he's done  
9 inserting the midazolam into the lines?

10 A. Once he have completed inserting midazolam  
11 into the lines, he gives me a signal, it's a little  
12 ball that he has, it's a window that you would be  
13 able to see that comes from the lethal injection  
14 executioner's room. He opens that window, and he  
15 places the ball on the outside to let me know that  
16 he has completed with the insertion of the  
17 midazolam.

18 Q. Okay. And once he sticks out that ball in  
19 the execution chamber at this point, is it just you,  
20 the associate warden, and the inmate in the  
21 execution room?

22 A. Yes.

23 Q. Okay. And once you see that ball, what do  
24 you do?

25 A. There's a waiting period. I wait.



1 Q. Okay. How long do you wait?

2 A. Two minutes.

3 Q. Okay. And after two minutes, what do you do?

4 A. Excuse me. I perform what the manual or the

5 protocol refers to as a conscious check once two

6 minutes pass.

7 Q. I'm sorry, conscious check what?

8 A. Once two minutes pass.

9 Q. Okay. And is anyone else, aside from you,

10 performing that consciousness check?

11 A. Just myself.

12 Q. Okay. Is anyone overseeing that

13 consciousness check?

14 A. Of course, my associate warden of security,

15 he can see it because he's standing next to me.

16 Q. Okay.

17 A. Of course, from the lethal injection room,

18 the executioner can see it because he can look

19 through the glass.

20 Q. Okay.

21 A. And he can actually see it on his monitor in

22 there as well.

23 Q. Okay.

24 A. And the commissioner can observe.

25 Q. And where's the commissioner at this point?

1 A. He's not in this building.

2 Q. Okay. How can he observe it?

3 A. By monitor.

4 Q. And at this point -- do you leave the room at  
5 any point?

6 A. Never.

7 Q. Okay. So once you do this consciousness  
8 check, then what happens?

9 A. Once the consciousness check is done and I  
10 make the determination that he's unconscious, then I  
11 give signal to proceed with the next LICs.

12 Q. And do you have training on determining what  
13 you're calling unconscious?

14 A. I have been trained, if you want to call it  
15 trained, I have been addressed, shown how to perform  
16 it.

17 Q. Okay. And without giving me any names, what  
18 was the role of the person who showed you how to  
19 perform a consciousness check?

20 A. It was a doctor.

21 Q. Okay. And did this doctor tell you what to  
22 look for to determine whether the inmate was  
23 conscious or unconscious?

24 A. Yes.

25 Q. Okay. Did you go -- did you discuss with the

1 doctor different levels of sedation?

2 A. Yes.

3 Q. Okay. Did you discuss with the doctor the  
4 difference between being unresponsive or insensate?

5 A. Yes.

6 Q. Okay. And do you know what the term  
7 "unresponsive" means?

8 A. Not alert.

9 Q. Okay. And do you know what the term  
10 "sensate" means?

11 A. It would be not fully alert.

12 Q. Okay. If I told you that "sensate" means the  
13 ability to feel pain, did you and the doctor  
14 describe -- discuss that a person can be  
15 unresponsive to a touch but can still feel pain?

16 A. Yes.

17 Q. Okay. And what did the doctor describe to  
18 you about that?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: There is normal reactions  
21 that the human body can have nerve-wise, flinching,  
22 jerking, even when no one is touching them. When  
23 you can do certain things to an individual and if I  
24 observe what I think that may be still alertness,  
25 then that would lead me to believe that they're not

1 fully unconscious.

2 BY MR. KURSMAN:

3 Q. Okay. So how do you decide that the inmate  
4 is fully unconscious?

5 A. Certain things I do, by calling their name at  
6 a tone that I think it would alert a person.

7 Q. Okay. And could you do that right now?

8 MR. SUTHERLAND: Object to the form.

9 THE WITNESS: My name is Tony. If I was  
10 trying to alert, I would yell at a high voice  
11 high-pitched voice, my name.

12 BY MR. KURSMAN:

13 Q. Okay. Could you do that, though, right now  
14 for us?

15 A. Yes. Tony!

16 Q. Okay.

17 A. And I would do it twice.

18 Q. Okay. And what else do you do aside from  
19 yelling the inmate's name twice?

20 A. I'd touch his eyelids with the back of my  
21 hand to see if maybe I can get a reaction.

22 Q. And could you demonstrate on your own face  
23 how exactly you'd touch his eyelids?

24 A. Back of my hand, eye closed, of course, and  
25 brush the back of his or her eyelids to see if

1 there's any reaction there.

2 Q. Okay. Is that all you do?

3 A. I do another step called a trapezius -- if I  
4 pronounce that word -- trapezius squeeze. And  
5 that's a muscle inside the neck area of the  
6 shoulder. I would squeeze, and that nerve would  
7 cause some form of reaction if a person was alert.  
8 And once I squeeze, and if I don't observe or see  
9 anything, then I feel that they're unconscious.

10 Q. Okay. And do you -- at that point do you ask  
11 any members of the IV team their thoughts on whether  
12 the inmate is unconscious?

13 A. No.

14 Q. Okay. Do you ask the physician his thoughts  
15 on whether the inmate is unconscious at that point?

16 A. No.

17 Q. Okay. Do you ask the executioner his  
18 thoughts?

19 A. No.

20 Q. Do you ask the associate warden?

21 A. No.

22 Q. Okay. And have you ever been involved in any  
23 surgeries in a hospital setting, in an observing  
24 fashion? Have you ever observed anesthesia  
25 performed in a hospital setting?

1 A. Yes.

2 Q. You have? Okay. When?

3 A. When I was a correctional officer, I used to  
4 work in transportation. That's transporting of  
5 offenders. Offenders, at some time or another, have  
6 to have outpatient surgery or inpatient surgery, and  
7 there is times that I have actually had to go into  
8 an operating room because the offender has to have  
9 security there, even though they're unconscious.

10 And I've observed them being put under.

11 Q. And have you ever talked to an  
12 anesthesiologist about what to look for in  
13 determining whether an inmate is unconscious as  
14 defined in the protocol?

15 A. No.

16 Q. Okay. Have you ever talked to an  
17 anesthesiologist about the difference between  
18 someone being unresponsive versus not sensate to  
19 pain, meaning not being able to feel pain?

20 A. No.

21 Q. Okay. And at this time are you able to hear  
22 what goes on in the execution room while you're in  
23 the execution chamber?

24 A. At this time? Repeat, please.

25 Q. While you're in the execution chamber --

1 A. Okay.

2 Q. -- are you able to hear what goes on in the  
3 lethal injection executioner's room?

4 A. No.

5 Q. Okay. Now -- and once you determine that the  
6 inmate is unconscious as defined in the protocol,  
7 what do you do then?

8 A. I signal for the executioner to proceed.

9 Q. Okay. And how do you do that?

10 A. Once I've determined he's unconscious, I  
11 approach the gurney to do the consciousness check.  
12 If I see that he's not conscious, I'll just step  
13 away from the gurney, and they -- and stand at a  
14 normal position, just stand.

15 Q. And what if he is conscious?

16 A. Then I will step away from the gurney and I  
17 will give a signal that he is unconscious.

18 Q. Okay. And what happens if you declare the  
19 inmate unconscious as defined in the protocol and  
20 then he looks to regain some sort of movement? What  
21 do you do then?

22 A. Once I do --

23 MR. SUTHERLAND: Object to the form.

24 THE WITNESS: Once I do the conscious  
25 check and I determine that the condemned is still

1 conscious, I step back, give the signal to proceed  
2 with the second set of -- the first round -- first  
3 round of midazolam.

4 BY MR. KURSMAN:

5 Q. So -- but my question is if you do this  
6 consciousness check --

7 A. Uh-huh.

8 Q. -- and you determine that the inmate is  
9 unconscious --

10 A. Yes.

11 Q. -- and you step back --

12 A. Yes.

13 Q. -- signaling to the executioner to proceed,  
14 and then the inmate moves, what do you do then?

15 A. Being that I've never had to do that because  
16 that's never happened --

17 Q. Uh-huh.

18 A. -- after I have determined that there was  
19 unconsciousness --

20 Q. Yes.

21 A. -- and I stepped back to proceed and then I  
22 noticed him move as though he may be conscious?

23 Q. Uh-huh.

24 A. Being that I have never did that before, I  
25 probably would approach the condemned again. It's



1 not written, but me -- and my mind will tell me I  
2 want to be 190 percent sure and accurate that what I  
3 saw is what I saw. Nothing is preventing me from  
4 approaching the condemned again.

5 Q. Okay. And if you approach the condemned  
6 again, does that signal to the executioner to  
7 stop --

8 A. He's watching.

9 Q. -- the second drug?

10 MR. SUTHERLAND: Object to the form.

11 BY MR. KURSMAN:

12 Q. Okay.

13 A. He's watching me. And it's not like you're  
14 doing things in a rapid motion. There's enough  
15 time, I should say, in between me stepping away and  
16 me stepping back up before he proceeds, even after I  
17 step back.

18 Q. Tell me how quickly -- after you step back to  
19 signal for the execution to proceed, how quickly  
20 does he administer the second drug?

21 MR. SUTHERLAND: Object to the form.

22 THE WITNESS: That I would not know.

23 BY MR. KURSMAN:

24 Q. Okay. So once you determine that the inmate  
25 is unconscious and you take a step back, you don't

1 know how long the executioner waits to push the  
2 second drug?

3 A. I do not know.

4 Q. Okay. And do you know how long he waits  
5 between pushing the second drug to push the third  
6 drug?

7 A. I do not know.

8 Q. Okay.

9 A. He would have to answer that.

10 Q. Okay. And during this time, is it only you  
11 and the associate warden and the inmate in the  
12 execution chamber?

13 A. Yes.

14 Q. Okay. And after the second and third drugs  
15 are pushed, then what happens?

16 A. Once I step back from the unconsciousness  
17 check, the executioner takes the ball back in before  
18 he begins with the second and third. Once he has  
19 finished administering the second and third, he  
20 places that same ball outside the window to let me  
21 know that the second and third have been  
22 administered.

23 Q. And after the third is administered, what  
24 happens?

25 A. There's a waiting period.

1 Q. Okay. And how long is that waiting period?

2 A. Five minutes approximately.

3 Q. Okay. And what happens after five minutes?

4 A. Myself, the associate warden of security

5 close blinds and pull curtains.

6 Q. And what happens after you close the blind

7 and pull the curtains?

8 A. The associate warden of security will ensure

9 that the audio system is off so no one will hear

10 outside of the room, by radio. I give him the

11 signal to retrieve the doctor and the doctor enters

12 the chamber.

13 Q. Okay. So at this point is it just you, the

14 associate warden, the physician, and the inmate now

15 in the execution room?

16 A. Correct.

17 Q. Okay. And what does the physician do at this

18 point?

19 A. He examines the condemned.

20 Q. Okay. And does he declare the inmate dead if

21 the inmate is dead?

22 A. Correct.

23 Q. Okay. And do you do anything for that

24 determination?

25 A. No.

1 MR. KURSMAN: Okay. I think, if it's  
2 okay with you, if we could take a break for about  
3 10 minutes?

4 THE VIDEOGRAPHER: One moment, please.  
5 Going off the record at 10:49 a.m.

6 (Recess observed from 10:52 a.m. to  
7 11:09 a.m.)

8 THE VIDEOGRAPHER: Back on the record at  
9 11:07 a.m.

10 BY MR. KURSMAN:

11 Q. Warden Mays, we just went on a break. Was  
12 there anything during the break that you thought of  
13 that made you want to correct any earlier answer?

14 A. No.

15 Q. Okay. Let's go back to Exhibit 1. And could  
16 we go to page 13?

17 Do you see it says at the top "Warden," and  
18 then it says "Primary Role, to ensure that the  
19 procedures prescribed by law and outlined in this  
20 manual are performed either by personal performance  
21 or by delegation"?

22 A. Yes.

23 Q. Okay. What does "prescribed by law" mean to  
24 you in this paragraph?

25 A. Prescribed by law, anything having to do

1 within the law, anything that is outlined within  
2 this, in this manual, as to -- that I ensure that  
3 those procedures are carried out.

4 Q. Have you reviewed the laws in Tennessee as  
5 they relate to executions?

6 A. No.

7 Q. Okay. And have you reviewed Supreme Court  
8 case law interpreting constitutional or  
9 unconstitutional executions?

10 A. No.

11 Q. Okay. What do you think this paragraph, the  
12 entire paragraph, what do you -- what do you think  
13 it means?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: This entire paragraph to  
16 me, it seems like it's telling me that I am to  
17 ensure exactly what it said, that the outlines in  
18 this manual, that they are either performed either  
19 by my personal performance or by delegation.

20 BY MR. KURSMAN:

21 Q. Now, let's go to heading 6, do you see that,  
22 under your duties, No. 6?

23 A. Yes.

24 Q. It says "To coordinate the appointment of  
25 execution team staff members"?

1 A. Yes.

2 Q. Now, we talked about this a bit before, but  
3 do you select the team members?

4 A. Some, but not all.

5 Q. Okay. Which ones don't you select?

6 A. I select them all. Some are selected -- was  
7 there before me. Basically that's it.

8 Q. How many were there before you?

9 A. The executioner, the doctor, two EMTs/IV  
10 team, and basically that's it.

11 Q. So how many IV team members did you select?

12 A. One.

13 Q. So there's only three total IV team members?

14 A. Yes.

15 Q. Okay. So let's go to page 31. Do you see  
16 this says, "Execution Team Member Selection  
17 Criteria?"

18 A. Yes.

19 Q. Okay. And it says at the bottom, "The  
20 following positions on the Execution Team are  
21 specialized and have specific requirements." Then  
22 it has three EMTs, three correctional staff,  
23 et cetera.

24 And if we go back to the top paragraph, it  
25 says, "The Warden selects the remaining team and

1 considers at minimum the following general criteria  
2 for other members."

3 And do you see the eight things it lists,  
4 length of service, ability to maintain  
5 confidentiality, maturity, et cetera?

6 A. Yes.

7 Q. Okay. Did -- with the members that were  
8 already on the team before you were warden, did you  
9 reevaluate any of this to decide that they were to  
10 stay on the team?

11 A. No.

12 Q. Okay. For the IV team member that you did  
13 select, one of the -- one of the criteria is length  
14 of service. What does that mean as it relates to  
15 that IV team member?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: I would say length of  
18 service in regards to that IV team member, it was  
19 probably how long she's performed those duties.

20 BY MR. KURSMAN:

21 Q. Okay. So length of service in your mind  
22 isn't length of service at TDOC?

23 A. It could be --

24 Q. Okay.

25 A. -- if you work for TDOC.

1 Q. But if you don't work for TDOC, what would  
2 length of service mean to you?

3 A. To me --

4 MR. SUTHERLAND: Object to the form.  
5 You can answer.

6 THE WITNESS: To me length of service  
7 would be anyone who had worked with the department  
8 and how long that she had been doing what she is  
9 doing in her field.

10 BY MR. KURSMAN:

11 Q. When you selected her, did you talk to her  
12 supervisors wherever she works?

13 A. No.

14 Q. Okay. Did you get any references outside of  
15 TDOC that recommended her for the lethal injection  
16 team?

17 A. Yes.

18 Q. Okay. And did you talk to those people who  
19 recommended her?

20 A. Yes.

21 Q. Okay. And were those people who recommended  
22 her people who were already on the execution team?

23 A. Yes.

24 Q. Okay. Was there anybody outside of the  
25 execution team that recommended her?



1 A. No.

2 Q. Okay. And how did that come to be? How did  
3 someone from the execution team know to recommend  
4 this person?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: I inquired.

7 BY MR. KURSMAN:

8 Q. And what do you mean by that?

9 A. We had a position that needed to be filled.  
10 I inquired with other team members that are already  
11 on the team --

12 Q. So did --

13 A. -- what recommendations.

14 Q. I apologize. So just so I'm clear, what you  
15 mean is you asked members of the IV team, "Do you  
16 know anyone else in your profession who wants to  
17 work on the IV team?"

18 A. That would be interested.

19 Q. Okay. And how many people applied for this  
20 position?

21 A. It wasn't applied for.

22 Q. Okay. How many people were you notified were  
23 interested in this position?

24 A. The one was presented to me --

25 Q. Uh-huh.

1 A. -- and then the interest was expressed from  
2 my behalf and that's how it came to be.

3 Q. Okay. So was there anybody, aside from that  
4 one person, who you interviewed for that position?

5 A. No.

6 Q. What would disqualify someone from serving on  
7 a team?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: Anything outside of these  
10 eight, anything based on my personal perception of  
11 what I see of that individual could disqualify them.

12 BY MR. KURSMAN:

13 Q. And what qualifications do you have to make  
14 that determination?

15 MR. SUTHERLAND: Objection to the form.

16 You can answer.

17 THE WITNESS: When I look at length of  
18 service, that speaks for itself. Ability to  
19 maintain confidentiality, take them as their word,  
20 and to include the background check. It's not hard  
21 to tell if a person is mature. If you watch them,  
22 if you talk to them, you can almost tell whether  
23 they are or not or whether they're responsible.

24 Willing to participate is self-explanatory.

25 Satisfactory work performance, recommendations that

1 I was given from the person that recommended the  
2 individual.

3 Professionalism, outstanding based on  
4 what was presented to me, this person in the  
5 community based on what was given to me from the  
6 person that referred them. The recommendation was  
7 brought to me. And, of course, the file was  
8 reviewed, background.

9 BY MR. KURSMAN:

10 Q. Let me ask you this: Do you -- do you have  
11 any medical experience?

12 A. No.

13 Q. Okay. So how would you be able to evaluate  
14 an IV team member's qualifications?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: I wouldn't. I would take  
17 the recommendation upon the person that recommended  
18 them that has that ability to do that.

19 BY MR. KURSMAN:

20 Q. Did you ask the IV team member who applied --  
21 did you ask this person if they had experience  
22 setting IV lines?

23 A. Yes.

24 Q. Did you ask them if they had experience with  
25 midazolam?

1 A. No.

2 Q. Did you ask them if they had experience with  
3 vecuronium bromide?

4 A. No.

5 Q. Did you ask them if they had experience with  
6 potassium chloride?

7 A. No.

8 Q. Okay. Did you ask them if they had  
9 experience in a prison setting?

10 A. Yes.

11 Q. Okay. Did you ask them if they had  
12 experience in prior executions?

13 A. Yes.

14 Q. Okay. And what did they tell you about the  
15 prison setting question? Did they have prior  
16 experience in a prison setting?

17 MR. SUTHERLAND: Objection to the form.

18 THE WITNESS: They didn't.

19 BY MR. KURSMAN:

20 Q. They did not have prior experience in a  
21 prison setting?

22 A. Huh-uh.

23 Q. Okay. And when they come in and tell you --  
24 when this person came in and told you that they  
25 wanted to be on the team, what did you tell them

1 would be the amount of time they would need to spend  
2 preparing for an execution?

3 A. Well, they came in -- they came in based on  
4 the fact that I requested for them to come in after  
5 the recommendation. The time spent, of course, I  
6 explained to them our training methods, how often we  
7 trained, and that this person would be required to  
8 review the protocol, as everyone else do.

9 Q. And how quickly would that person be able to  
10 participate in an execution after you put them on an  
11 execution team?

12 MR. SUTHERLAND: Objection to the form.

13 THE WITNESS: Once everything had been  
14 cleared background-wise, reviewing of the manual,  
15 rehearsal along with us, there is no period.

16 BY MR. KURSMAN:

17 Q. Okay. And let me go back for a second to a  
18 question I asked you earlier about the diagram that  
19 we discussed.

20 When you and the associate warden are in the  
21 execution chamber with the inmate, if you see signs  
22 of swelling at an IV site, what would you do?

23 A. That would be for them to monitor the IV  
24 sites. I don't monitor the IV sites.

25 Q. Okay. And how are they monitoring the IV

1 sites once they're out of the room?

2 A. There is a monitor that shows the IV sites.  
3 They're monitoring from internal.

4 Q. Oh, so there is a monitor in there, in the  
5 non-identified room, where they can see the IV  
6 sites? Is that what you're saying?

7 A. No.

8 Q. Okay.

9 A. There is a monitor in the IV room.

10 Q. So let's quickly go back -- go back to  
11 page -- go back to page 10. Can you tell me where  
12 the IV room is?

13 A. Take the right door from the gurney room --

14 Q. Uh-huh.

15 A. -- into the lethal injection, executioner's  
16 room where the arrow's pointing into that room?

17 Q. Uh-huh.

18 A. That's where the monitor is.

19 Q. In the lethal injection or executioner's  
20 room?

21 A. Correct.

22 Q. Okay. But isn't only the executioner in that  
23 room?

24 A. Yes.

25 Q. And that's where the monitor is?

1 A. Yes.

2 Q. Okay. So the executioner is monitoring the  
3 IV sites?

4 A. He's monitoring along with others that is in  
5 the room with him.

6 Q. Okay. So who else is in the executioner's  
7 room with the executioner during the execution?

8 MR. SUTHERLAND: Object to disclosure of  
9 any identities. Just answer with regard to the  
10 title.

11 THE WITNESS: There is more than one  
12 executioner. We have an executioner, along with  
13 other executioners, that assist him with monitoring,  
14 documenting, and things of that sort.

15 BY MR. KURSMAN:

16 Q. Okay. Who -- so I do not see a role for  
17 other executioners in the protocol. What would  
18 their title be, these other executioners?

19 A. Assistants.

20 Q. Assistant executioners?

21 A. Yes.

22 Q. Okay. And are they also correction officers?

23 A. No.

24 Q. Okay. What are the assistant executioners?

25 What are their qualifications?

1 A. One of them is --

2 MR. SUTHERLAND: Object to any  
3 specifics. We're not going to talk about specifics  
4 that could lead to the identification of the  
5 individual.

6 BY MR. KURSMAN:

7 Q. But you can still answer, without the  
8 specifics.

9 A. They have other roles in the department.

10 Q. Okay. Okay. Are they -- do they have  
11 medical backgrounds?

12 A. That I wouldn't know.

13 Q. Okay. Is it -- is it the recorder who's in  
14 there with the -- is that who you're describing as  
15 the assistant executioner?

16 A. No.

17 Q. Okay. Is it the observer?

18 A. Observer?

19 Q. Yeah. I'm not actually even sure what the  
20 observer is. So you're saying it's just different  
21 people in the department who are with the -- with  
22 the executioner?

23 A. Yes.

24 Q. And they're the ones who are monitoring the  
25 IV sites?



1 A. Yes.

2 Q. Is the executioner also monitoring the IV  
3 sites?

4 A. That I wouldn't know.

5 Q. Okay. And you are unaware whether the  
6 assistant executioners, as you call them, have any  
7 medical training or experience?

8 A. Not aware.

9 Q. Okay. And do you know whether they have any  
10 experience with setting IVs?

11 A. That I wouldn't know.

12 Q. Okay. And you've never heard the term  
13 "observer" before?

14 A. I've heard the term "observer" before, but in  
15 reference to this?

16 Q. Yeah. That was a bad question. I apologize.  
17 Have you ever heard the term "observer" in  
18 reference to the execution protocol, someone's role  
19 as the observer?

20 A. Not that I could recall.

21 Q. Okay. And would you know what to look for in  
22 terms of swelling at an injection site?

23 A. No.

24 Q. Okay. So let's go back -- let's go back  
25 again to page 31.

1           And has anybody who's been involved as one  
2 of these execution team members declined to  
3 participate again after an execution?

4       A.       No.

5       Q.       Okay. And when you selected the one member  
6 of the execution team, did you consult with anyone  
7 else while selecting that member?

8       A.       I consulted with the individual that  
9 recommended the individual.

10      Q.       Okay. And that individual was just another  
11 member of the IV team?

12      A.       Correct.

13      Q.       Okay. And have you ever removed anyone from  
14 the execution team?

15      A.       Yes.

16      Q.       Okay. Can you tell me who, just their role,  
17 not any identifying information?

18      A.       An escort member.

19      Q.       Okay. And can you tell me why?

20      A.       Based on conduct.

21      Q.       And what was that conduct that made you  
22 remove them?

23      A.       Not cohesive to departmental standards.

24      Q.       Was it during an execution?

25      A.       No.

1 Q. Was it during an execution training?

2 A. No.

3 Q. Okay. What did they do that you describe  
4 as --

5 MR. SUTHERLAND: I'm going to object to  
6 the extent that any specific information  
7 regarding -- to the disclosure of any information  
8 that, with inquiry, could result in the disclosure  
9 of that person's identity.

10 Does that make sense, Alex?

11 MR. KURSMAN: That makes sense to me.

12 MR. SUTHERLAND: Okay.

13 MR. KURSMAN: And I'm okay with it.

14 (WHEREUPON, the above-mentioned  
15 document was presented, previously marked as  
16 Exhibit Number 50.)

17 MR. KURSMAN: Let's go to Exhibit 50.  
18 50, five zero. Sorry.

19 MR. SUTHERLAND: Exhibit 50?

20 MR. KURSMAN: Exhibit 50.

21 MR. SUTHERLAND: Gotcha.

22 BY MR. KURSMAN:

23 Q. And do you recognize this document?

24 A. Yes.

25 Q. Okay. And what is this document?

1 A. It appears to be where it looked like  
2 training -- maybe training dates of individuals that  
3 is part of the team.

4 Q. Okay. And I think you told me a minute ago  
5 that there were three IV team members; is that  
6 right?

7 A. Yes.

8 Q. Okay. Why does this have six IV team  
9 members?

10 A. (Reviewing)

11 MR. SUTHERLAND: I'm sorry. What are  
12 you referring to?

13 MR. KURSMAN: So if you look at IV team,  
14 you see on Exhibit 50? I think you're on 51.

15 MR. SUTHERLAND: You're right. My  
16 apologies.

17 THE WITNESS: Well, the EMTs and the IVs  
18 is basically the same. We have three EMTs, which is  
19 three IV teams. One of those is the individual that  
20 is -- that is -- okay. IV 2 is a part of the  
21 executioner team. That would dismiss 1. And 1 is  
22 deceased, which that dismiss 2. Which would give  
23 us, what, four left? That's a good question.

24 BY MR. KURSMAN:

25 Q. So you don't know the answer why it lists --

1 A. I do not.

2 Q. Okay. So just so I'm clear, there's -- you  
3 see at the top it's three EMT members, EMT 1, EMT 2,  
4 and EMT 3. You're saying all three of these members  
5 are also members of the IV team, right?

6 A. Correct.

7 Q. Okay. One of those members serves as the  
8 executioner, right?

9 A. Correct.

10 Q. Okay.

11 A. Appears to -- that's what it's -- that's what  
12 it's listed as.

13 Q. But the executioner -- and correct me if I'm  
14 wrong -- the executioner is not an EMT, right?

15 A. No.

16 Q. Okay. So we have the executioner and then we  
17 should have three other IV team members who are  
18 EMTs, right?

19 A. Correct.

20 Q. Okay. So we have one, two, three, four,  
21 five. You're saying there's one here because  
22 somebody is deceased now, right?

23 A. Correct.

24 Q. And you don't know why -- who the other  
25 person is?

1 A. Correct.

2 Q. Okay. Do you know if that person was fired  
3 from the execution team?

4 A. No.

5 Q. Okay. And you don't know of anyone else,  
6 while you were warden, that served as an IV team  
7 member aside from the person who's deceased, the  
8 three current IV team members, and the executioner?

9 A. Not to my knowledge.

10 Q. Okay. Do you know why, at the top when it  
11 says EMT 1, EMT 2, and EMT 3, it says, "Information  
12 regarding specific dates of attendance for EMT will  
13 be provided as soon as possible."

14 My understanding, from what you're saying,  
15 is those EMTs are just also the IV team members.

16 A. Correct, yes.

17 Q. So do you know why that -- the information  
18 about their practice sessions couldn't have been  
19 provided at the same date that the information about  
20 the practice sessions for the IV team member was  
21 provided?

22 A. I do not.

23 Q. Okay. Did the IV team member who passed  
24 away, did that member participate in Donnie  
25 Johnson's execution?

1 A. I can't say.

2 Q. Okay. And the reason I ask is because we  
3 have IV 6 and IV 5 training on 8/5/2019. And I  
4 believe Donnie Johnson's execution was 8/9/2019.  
5 But you don't know?

6 A. I don't know.

7 Q. Okay. And do you know if -- if either IV  
8 Member 5 or IV Member 6 is the person that we're  
9 discussing that you selected to serve on the  
10 execution team?

11 A. I don't know that either.

12 Q. Okay. And are the people identified here as  
13 EMT 1, EMT 2, and EMT 3, are they part of the  
14 current execution team?

15 A. That I wouldn't know either.

16 Q. And why wouldn't you know that?

17 A. If I would have formulated this document, I  
18 would be able to tell you, but I didn't formulate  
19 that document.

20 Q. Okay. Let's go back to page 13 of Exhibit 1.

21 Do you see No. 7, it says, "Select a person  
22 to serve as Executioner"?

23 A. Yes.

24 Q. Did you do this?

25 A. No.

1 Q. Why didn't you do this?

2 A. There was an executioner already in place  
3 when I assumed my duties.

4 Q. And did you talk to that executioner before  
5 the first execution that occurred while you were the  
6 warden?

7 A. Yes.

8 Q. Okay. And did you already have a history  
9 with that executioner before you became warden?

10 A. Yes.

11 Q. Okay. And then do you see, under No. 9, it  
12 says, "To arrange for the presence of a physician to  
13 carry out functions as set forth on page 19."

14 Do you see that?

15 A. I do.

16 Q. Is it the same physician every execution?

17 A. Yes.

18 Q. How did you arrange for the presence of that  
19 physician?

20 A. That is conducted through another individual,  
21 the commissioner's designee.

22 Q. Did you delegate that to someone else?

23 A. No.

24 Q. Okay. Who delegated that role to someone  
25 else?



1 A. That would probably be the commissioner.

2 Q. Okay. Did anybody ask you to arrange for the  
3 presence of a physician?

4 A. We worked together in the decision-making,  
5 but he made the decision.

6 Q. Okay. And when you say "we," you mean you  
7 and the --

8 A. Commissioner.

9 Q. -- commissioner? Okay.

10 And prior to selecting the physician, do you  
11 know if -- or did you discuss their experience with  
12 performing venous cutdown procedures?

13 A. No.

14 Q. Do you know what venous cutdown procedures  
15 are?

16 A. It's implementing an IV in other areas other  
17 than within the arm.

18 Q. And do you know how a venous cutdown  
19 procedure is done?

20 A. Not really.

21 Q. Okay.

22 Let's turn to page 19 of Exhibit 1. And do  
23 you see it says the physician and then it says,  
24 "Physician's Primary Role"?

25 A. Uh-huh, yes.

1 Q. And then do you see No. 5, it says, "To  
2 pronounce death if no vital signs are detected"?

3 A. Yes.

4 Q. Why doesn't the physician also check for  
5 consciousness?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: That I couldn't answer.

8 BY MR. KURSMAN:

9 Q. Do you think they're more qualified than you  
10 to check for consciousness?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: Most definitely.

13 BY MR. KURSMAN:

14 Q. And then do you see No. 1, it says, "Duties:  
15 To be present at the time of execution in the  
16 capital punishment garage"?

17 A. I do.

18 Q. Do you know why the physician isn't in the  
19 execution chamber?

20 A. I don't.

21 MR. SUTHERLAND: Objection to the form.

22 BY MR. KURSMAN:

23 Q. Okay. Do you know why the physician isn't in  
24 the -- the lethal injection executioner's room?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: I do not.

2 BY MR. KURSMAN:

3 Q. Do you think it would help you with your  
4 duties if the physician was in the chamber?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: I do not.

7 BY MR. KURSMAN:

8 Q. Okay. Why?

9 MR. SUTHERLAND: Same objection.

10 THE WITNESS: Why do I feel like he  
11 would not assist me in my duties by being there?

12 BY MR. KURSMAN:

13 Q. Yeah.

14 A. Based on my prior experiences, I don't see  
15 where there had been a need for the physician to be  
16 there.

17 Q. Okay. And then you see No. 2, it says, "As  
18 an ultimate and last option, the physician may  
19 perform a venous cut-down procedure should the IV  
20 team be unable to find a vein adequate to insert the  
21 catheter"?

22 A. I see it, yes.

23 Q. WHAT does "ultimate and last option" mean?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: IV team unable to perform

1 in other areas, that's where the physician would  
2 come in and perform that procedure is what that  
3 means.

4 BY MR. KURSMAN:

5 Q. And who makes that decision?

6 A. The EMTs, the IV team.

7 Q. Do they consult with you?

8 A. If they're unable to find a vein?

9 Q. Yes.

10 A. Yes.

11 Q. Okay. And do you have a procedure for that?

12 A. No procedure. They would just let me know.

13 Q. Now, I'm sorry --

14 A. They're all there in the room together.

15 Q. I meant a procedure for what it means for  
16 them to not find a vein, meaning how long do they  
17 have to look before they say, "We can't find a  
18 vein"?

19 A. I'd say no time limit.

20 Q. Okay. It's just up to the IV team?

21 A. Yes.

22 Q. Okay. And then do you see, if you go to  
23 No. 3, it says, "To examine the body for vital signs  
24 five minutes after the LIC has been injected."

25 Do you see that?

1 A. Yes.

2 Q. Okay. Why wait for five minutes?

3 MR. SUTHERLAND: Objection to the form.

4 THE WITNESS: Protocol prescribes five  
5 minutes.

6 BY MR. KURSMAN:

7 Q. But why does the protocol prescribe five  
8 minutes?

9 MR. SUTHERLAND: Same objection.

10 THE WITNESS: I didn't write the  
11 protocol, I just follow it.

12 BY MR. KURSMAN:

13 Q. Okay. Now, if you are in the execution  
14 chamber and you need help with the consciousness  
15 check, who would you call?

16 A. It's not written who I will call.

17 Q. Well, what would you do?

18 A. If I felt as though I needed assistance in  
19 determining a conscious check, which I haven't yet,  
20 it could be either the EMT or the doctor.

21 Q. Okay. And you said which you haven't yet.  
22 How can you be sure that you're right when you  
23 determine an inmate's consciousness?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: Nothing is sure, you just

1 know and go with it.

2 BY MR. KURSMAN:

3 Q. And what does that mean?

4 MR. SUTHERLAND: Objection to the form.

5 THE WITNESS: That means that -- if I'm  
6 sure whether an individual was conscious or  
7 unconscious or not?

8 BY MR. KURSMAN:

9 Q. Yes.

10 A. The times I checked, they weren't -- they  
11 weren't conscious.

12 Q. Right, but my question is just how can you be  
13 sure?

14 MR. SUTHERLAND: Same objection.

15 THE WITNESS: What I'm saying, where we  
16 discussed earlier to give me indication that they  
17 may be unconscious or conscious, then I deem them to  
18 be unconscious.

19 BY MR. KURSMAN:

20 Q. And that makes you sure of your decision? Is  
21 that what you're saying?

22 A. Yes.

23 Q. Okay. And are you aware that in the medical  
24 field they don't use the term "unconscious"?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: No.

2 BY MR. KURSMAN:

3 Q. Okay. Instead -- are you aware that instead  
4 what they use are different planes of anesthesia?

5 MR. SUTHERLAND: Same objection.

6 THE WITNESS: No.

7 BY MR. KURSMAN:

8 Q. Okay. And are you aware of the difference  
9 between sedation versus anesthesia?

10 A. Full term, no.

11 Q. Okay. And how would you be able to tell  
12 whether the prisoner was sedated as opposed to being  
13 under surgical anesthesia?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: I couldn't.

16 BY MR. KURSMAN:

17 Q. Okay. So if we go to No. 4 for physician's  
18 duties, back on page 19, do you see it says, "To  
19 notify the Warden if the inmate is not legally  
20 dead"?

21 A. Yes.

22 Q. What would you do then?

23 A. The physician will leave the chamber. We  
24 will open the blinds and the curtain again, follow  
25 the procedure as before.

1 Q. So let me just get this straight. If the  
2 inmate is injected with all three drugs and you wait  
3 five minutes and the physician comes in and says,  
4 "The inmate is not dead" --

5 A. Uh-huh.

6 Q. -- then you just repeat the entire protocol  
7 again?

8 A. We insert the first rounds of the midazolam.

9 Q. Uh-huh. And then do you do another  
10 consciousness check again?

11 A. Yes.

12 Q. Okay. But at this point you're aware that  
13 the inmate is paralyzed, right?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: Okay. Yes.

16 BY MR. KURSMAN:

17 Q. So how would you able to do a consciousness  
18 check if the inmate was already paralyzed from the  
19 second drug?

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: Just perform the test.

22 BY MR. KURSMAN:

23 Q. Okay. Let's go back to page 13 of Exhibit 1,  
24 which is the warden's duties. And do you see  
25 No. 11, it says, "To keep the Commissioner and



1 Assistant Commissioner of Prisons informed of the  
2 progress towards and implementation of the  
3 execution."

4 A. Yes.

5 Q. What does that mean?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: If I feel that something  
8 was, so to speak, out in left field that's outside  
9 the norm, that's when I will keep them informed.

10 BY MR. KURSMAN:

11 Q. And what would be outside of the norm?

12 MR. SUTHERLAND: Same objection.

13 THE WITNESS: Anything that is not  
14 being -- going according to protocol.

15 BY MR. KURSMAN:

16 Q. So if there is a deviation from the protocol,  
17 you will inform the commissioner and assistant  
18 commissioner of the prisons?

19 A. Once he have exhausted everything that the  
20 procedure calls for, then yes, at that time.

21 Q. Okay. What if there is a deviation from the  
22 protocol before you exhaust everything else that the  
23 protocol calls for, meaning let's say you're going  
24 along with the protocol and then one of the  
25 executioners deviates from the protocol. At that

1 point do you notify the commissioner and the  
2 assistant commissioner?

3 MR. SUTHERLAND: Objection to the form.

4 THE WITNESS: If -- and they never  
5 have -- one of the EMTs deviate from the protocol, I  
6 observe something out of the norm, yes, I will stop  
7 it at that time and, yes, I will inform the  
8 commissioner as to what is taking place.

9 BY MR. KURSMAN:

10 Q. Okay. And how do you notify the  
11 commissioner?

12 A. By phone.

13 Q. Okay. And the commissioner is where at this  
14 point?

15 A. In a different building.

16 Q. Okay. And why do you notify the  
17 commissioner?

18 A. Protocol instructs me to notify the  
19 commissioner.

20 Q. Okay. And if there's a deviation, who makes  
21 the decisions to proceed with the execution?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: That would be the  
24 commissioner.

25 ///

1 BY MR. KURSMAN:

2 Q. So that's not you, that's the commissioner?

3 A. Correct.

4 Q. Okay. Let's go to 13 of your duties. It  
5 says, "To order the Executioner, either verbally or  
6 by gesture, to proceed with the execution."

7 So we talked about this a bit, but does  
8 the -- does the assistant -- the associate warden  
9 help you with this determination as well?

10 A. No.

11 Q. Okay. So you and he don't talk during this  
12 determination?

13 A. No.

14 Q. Okay. Does he approach the inmate as well?

15 A. He's standing there, but --

16 Q. He --

17 A. -- he don't approach him like I do.

18 Q. Yeah, that's my question. So the two of you  
19 are standing somewhere in the execution room --

20 A. Correct.

21 Q. -- correct?

22 And then you approach the inmate?

23 A. Correct.

24 Q. But the associate warden does not come with  
25 you to approach the inmate?

1 A. Correct.

2 Q. Okay. So let's go to page 14, which is  
3 titled "Associate Warden of Security." And it says  
4 the primary role is to "Assist the Warden in  
5 performing execution procedures and substitute for  
6 the Warden if he is unable to perform his duties."

7 How does he assist you during an execution?

8 A. In multiple ways. Are you speaking about  
9 from beginning to end or just during the actual  
10 execution itself?

11 Q. From beginning to end.

12 A. He also is there helping coordinate members  
13 of the team. He's doing basically the same thing  
14 that I'm doing, observing to make sure everything is  
15 in order from beginning to end.

16 Q. And how about during the execution?

17 A. During the execution, basically he assists  
18 with the opening and closing of the curtains and  
19 blinds, he assists me when I give him the order to  
20 retrieve the physician or the IV team. He assists  
21 me during the actual execution by making sure that  
22 audio and everything is in order. Basically he  
23 takes directions from me once I give them to him.  
24 That's how he assists me.

25 Q. And it says he would substitute for you if

1 you were unable to perform your duties?

2 A. True, yes.

3 Q. When would you be unable to perform your  
4 duties?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: If I was unable to perform  
7 my duties, if for some reason I had to be out for an  
8 emergency situation, God forbid what, if I became  
9 ill in some way that I would not be able to maintain  
10 control of myself, something of that nature.

11 BY MR. KURSMAN:

12 Q. Does the associate warden have training on  
13 assessing consciousness?

14 A. Yes, he does.

15 Q. He does? And did he receive the same  
16 training with you?

17 A. Yes, he did.

18 Q. And was that from a medical professional?

19 A. He received --

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: He received it from me.  
22 Now, he has to speak for himself if he received any  
23 other from me.

24 BY MR. KURSMAN:

25 Q. Okay. So you trained the associate warden on

1 how to assess consciousness?

2 A. By him monitoring and watching.

3 Q. Okay. And you said earlier that you received  
4 training from someone?

5 A. I did.

6 Q. And was that the warden while you were the  
7 associate warden?

8 A. No.

9 Q. Okay. Who was that, without identifying any  
10 names?

11 A. I stated earlier it was a physician.

12 Q. Okay. Is it the physician involved in this  
13 execution?

14 A. No.

15 Q. Okay. And how many times did that physician  
16 train you on assessing consciousness?

17 A. Multiple, not a number.

18 Q. You mean over 10?

19 A. Probably less than 10.

20 Q. Probably less than 10. Is the physician at  
21 the trainings that you conduct at TDOC, the  
22 execution trainings?

23 A. Not every one.

24 Q. But that physician is at some of those  
25 trainings, you're saying?

1 A. Yes.

2 Q. Okay. And this is a physician that's  
3 different from the physician in the execution  
4 protocol?

5 A. Yes.

6 Q. Okay. And that physician shows you how to  
7 perform a consciousness check?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: He showed me how to  
10 perform, yes.

11 BY MR. KURSMAN:

12 Q. And he does that at the training sessions?

13 A. Outside of the training sessions.

14 Q. Do you do that with a live body?

15 A. Yes.

16 Q. Okay. Does the physician have experience  
17 doing his own consciousness checks?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: That I would not know.

20 BY MR. KURSMAN:

21 Q. Okay. Did you ask the physician whether they  
22 had experience performing consciousness checks?

23 A. I did not.

24 Q. Okay. So let's go to page 15 on Exhibit 1,  
25 titled "Lethal Injection Recorder."

1 Do you see it says the primary role is to  
2 "Assist the Warden in carrying out his duties"?

3 A. I do.

4 Q. Okay. How does he assist you in carrying out  
5 your duties?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: As the protocol spells  
8 out, one, two, and three, what his duties are.

9 BY MR. KURSMAN:

10 Q. So does he do anything else aside from  
11 Duties 1, 2, and 3?

12 A. No.

13 Q. Okay. Let's go to page 20 of the protocol.  
14 Do you see at the top it says, "IV Team"?

15 A. Yes.

16 Q. And do you see it says, "Primary Role, To  
17 establish properly functioning IV lines for  
18 administration of the lethal injection chemicals"?

19 A. Yes.

20 Q. How do you ensure that the IV team has done  
21 this?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: I explained earlier I  
24 don't make that determination. The people that  
25 monitor the IV lines make that determination.



1 BY MR. KURSMAN:

2 Q. And that would be the executioner and the  
3 executioner's assistant?

4 A. Yes.

5 Q. Okay. And then if we go to 4, it says, "To  
6 make sure vascular access is properly established."

7 Who ensures this is done? Is that also the  
8 executioner and the executioner's assistants?

9 A. Yes.

10 Q. Okay. And then if we go to 5, it says, "To  
11 make sure the IV lines are flowing properly."

12 Is this also the executioner and the  
13 executioner's assistants --

14 A. Yes.

15 Q. -- that make sure that this is done?

16 MR. SUTHERLAND: Objection to the form.

17 THE WITNESS: Yes.

18 BY MR. KURSMAN:

19 Q. Okay. So let's go now to page 26.

20 And do you see it says at the top,  
21 "Assistant Commissioner of Prisons"?

22 A. Yes.

23 Q. And under No. 2 it says, "To maintain  
24 telephone and/or radio contact with the Warden and  
25 other personnel."

1 A. Yes.

2 Q. Okay. Why is this done?

3 A. In case any communication needs to be made or  
4 something needed to be, I guess, conveyed up or  
5 reported up.

6 Q. And during any execution where you've been  
7 warden, has communication needed to be made?

8 A. No.

9 Q. Okay. Is there a telephone contact while  
10 you're determining consciousness?

11 A. No.

12 Q. And what would you be discussing with the  
13 associate warden of executions --

14 MR. SUTHERLAND: Objection to the form.

15 BY MR. KURSMAN:

16 Q. -- if telephone contact were to be made?

17 A. If anything looks out of the ordinary, as I  
18 would with the commissioner.

19 Q. Okay. Do you feel like you have a lot of  
20 roles during the execution?

21 MR. SUTHERLAND: Objection to the form.

22 THE WITNESS: There's several roles,  
23 yes.

24 BY MR. KURSMAN:

25 Q. Do you think anyone on the execution team has

1 more roles than you have?

2 MR. SUTHERLAND: Objection to the form.

3 THE WITNESS: No.

4 BY MR. KURSMAN:

5 Q. Is there a reason that some of your roles  
6 aren't delegated to other people?

7 MR. SUTHERLAND: Same objection.

8 BY MR. KURSMAN:

9 Q. The only reason I ask is it seems like a  
10 lot -- you know, you sort of play the role of  
11 everything during an execution.

12 A. Several roles that I'm responsible for are  
13 delegated. When I -- when an individual escort an  
14 inmate from the -- into the chamber, that's my  
15 responsibility and duty, but others are doing the  
16 role. When they restrain him to the gurney, it's my  
17 responsibility and duty, but they're performing the  
18 role.

19 My assistant, when he's retrieving the  
20 doctor, assisting me in opening blinds and  
21 curtains, that's part of my duties, but he helped  
22 me perform those roles. They're all delegated to  
23 those individuals to make sure they carry it out.

24 Q. Are there any roles that you think are so  
25 important that you don't delegate?

1 A. There's not a role that I perform that no one  
2 there is not able to perform.

3 Q. So would you be comfortable delegating  
4 checking consciousness to the associate warden?

5 A. Yes.

6 MR. SUTHERLAND: Objection to the form.

7 BY MR. KURSMAN:

8 Q. Okay. And do you think you are any more  
9 qualified to check consciousness than the associate  
10 warden?

11 MR. SUTHERLAND: Same objection.

12 THE WITNESS: I would say no.

13 BY MR. KURSMAN:

14 Q. Okay. So let's turn to page 32.

15 You see at the top it says, "Training of  
16 Execution Team Members"?

17 A. Yes.

18 Q. And then it says under "Training," No. 1,  
19 "All Execution Team members must read the Lethal  
20 Injection Execution Manual when they become members  
21 of the Execution Team"?

22 A. Yes.

23 Q. Is the lethal injection manual the same thing  
24 that we've been describing as the protocol?

25 A. Yes.

1 Q. Is there any other manuals that they must  
2 read that aren't the protocol?

3 A. For lethal injection?

4 Q. Yes.

5 A. No.

6 Q. Okay. What about for anything else?

7 A. Separate manual for electrocution, of course.

8 Q. Okay. And do the team members receive any  
9 other reading or training materials as it relates to  
10 the lethal injection protocol?

11 A. No.

12 Q. Okay. So aside from getting the protocol,  
13 they're not given any other training materials?

14 A. Materials? No.

15 Q. Okay. Is there something else that they are  
16 given?

17 A. Other than reading the manual --

18 Q. Yes.

19 A. -- and doing the monthly training?

20 Q. Yes.

21 A. That's it.

22 Q. Okay. And you don't know who created the  
23 protocol, right?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: No.

1 BY MR. KURSMAN:

2 Q. Okay. And then do you see right after that  
3 it says, "Additionally, the Warden or designee holds  
4 a class during which the manual is reviewed and  
5 clearly understood by all participants"?

6 Can you describe this class for me?

7 A. We assemble with the manual. We read either  
8 together or alone. And we sign a training roster.

9 Q. So you get to the class, you all read the  
10 manual, and then you sign a training roster?

11 A. Uh-huh.

12 Q. Do you do anything else at the class?

13 A. No.

14 Q. Okay. Do you practice executions at the  
15 class?

16 A. At a class?

17 Q. At the class.

18 A. No. Outside our monthly training, no.

19 Q. Okay. How often is this class held?

20 A. Annually.

21 Q. Okay. At these classes do the execution team  
22 ask questions?

23 A. If they have one.

24 Q. Have they had one?

25 A. Not really, no.

1 Q. Okay. Are there discussions about issues  
2 that have arisen during either the rehearsals or  
3 actual executions?

4 A. We really haven't had any.

5 Q. Okay. And how do you know that all of the  
6 participants are understanding the manual?

7 MR. SUTHERLAND: Objection to the form.

8 THE WITNESS: That I don't know.

9 BY MR. KURSMAN:

10 Q. Do you give them any type of test?

11 A. No.

12 Q. And what qualifies you to teach the class?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: Based on my experience,  
15 based on reading and understanding, based on the  
16 protocol, spelling out that it is me. That's  
17 basically it, what qualifies me.

18 BY MR. KURSMAN:

19 Q. And how long is the class?

20 A. There's no time limit.

21 Q. Okay. Well, how long has it been?

22 A. We have -- it takes a while to read that.  
23 Two to three hours, sometimes maybe less, maybe  
24 longer.

25 Q. And you said the participants then sign a

1 sheet?

2 A. Training roster.

3 Q. Okay. And where is that kept?

4 A. That's kept in a safe in my office.

5 MR. KURSMAN: Okay. Mr. Sutherland, we  
6 would -- we would request those, that roster.

7 MR. SUTHERLAND: Noted.

8 BY MR. KURSMAN:

9 Q. Does it happen at the same time every year,  
10 the class?

11 A. No.

12 Q. Okay. And who schedules it?

13 A. My associate warden, based on my  
14 instructions.

15 Q. And now let's go to part 2, it says, "The  
16 Execution Team simulates Day 3 (Execution Day) of  
17 the Death Watch Procedure and steps outlined in  
18 Section 4 for at least one hour each month.  
19 Additional training is held within two weeks before  
20 a scheduled execution. A training record is  
21 maintained to document all staff members who  
22 participate in the training."

23 Do you see that?

24 A. I do, yes.

25 Q. Does this mean that the entire simulation of



1 Day 3, from start to finish, takes only one hour?

2 A. No. What that means, we simulate Day 3, but  
3 it has to be at least an hour.

4 Q. Okay. And how long has it been when you've  
5 done it?

6 A. Each month it varies. It may be an  
7 hour-and-a-half, it may be two hours, depending on  
8 how many times we go through the scenario. It may  
9 be two-and-a-half hours.

10 Q. And do you follow the protocol to a tee when  
11 you're doing those simulations?

12 A. Yes.

13 Q. Okay. So you start at the 5 p.m. mark or  
14 whatever it is?

15 A. We start at the 7 p.m. mark.

16 Q. Oh, you start at the 7 p.m. mark.

17 A. Uh-huh.

18 Q. Okay. And what is the additional training  
19 that takes place within the two weeks of a scheduled  
20 execution?

21 A. The additional training is just basically, if  
22 we've got an execution that is two weeks out, we  
23 enhance our rehearsals. Normally it's once a month.  
24 Two weeks away from the execution we may practice  
25 twice a week, three times a week.

1 Q. And when you say "enhance the rehearsals," do  
2 you just mean you practice more?

3 A. Practice more.

4 Q. And who determines how much more practice the  
5 execution team needs?

6 A. That's me.

7 Q. Okay. And what -- and what goes into your  
8 decision-making?

9 A. Really, if I feel like we need more, then we  
10 do more.

11 Q. And who oversees those trainings?

12 A. I do.

13 Q. Okay. Is there anyone more qualified than  
14 you --

15 MR. SUTHERLAND: Objection to the form.

16 BY MR. KURSMAN:

17 Q. -- to oversee the trainings?

18 A. Yes.

19 Q. Who?

20 A. I would say the -- my supervisor,  
21 commissioner.

22 Q. Okay. And is there anyone more qualified  
23 than you to do those classes that we just discussed?

24 A. That I couldn't answer. It would probably be  
25 the same person.

1 Q. And why do you think the commissioner is more  
2 qualified than you --

3 MR. SUTHERLAND: Objection to the form.

4 BY MR. KURSMAN:

5 Q. -- to lead these trainings and classes?

6 A. That I wouldn't know. I would just assume,  
7 his title and his position, that he probably would  
8 be.

9 Q. Do you think he's more qualified than you to  
10 determine an inmate's consciousness?

11 MR. SUTHERLAND: Same objection.

12 THE WITNESS: That I couldn't answer.

13 BY MR. KURSMAN:

14 Q. Okay. And during these practice sessions,  
15 how do you practice for determining an inmate's  
16 consciousness?

17 A. According to the manual specifications.

18 Q. And do you practice with a live body?

19 A. I do.

20 Q. Does the live person ever pretend to be  
21 conscious?

22 A. Never have.

23 Q. Never has pretended to be conscious?

24 A. Uh-huh.

25 Q. Okay.

1 A. No.

2 Q. And have you ever been tested on whether you  
3 can adequately determine whether an inmate is under  
4 a certain level of anesthetic depth?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: That I would not know.

7 BY MR. KURSMAN:

8 Q. Okay. Meaning -- and what I mean by that is  
9 have you ever -- have you ever tested your skills on  
10 somebody who was maybe injected with just a little  
11 bit of midazolam?

12 MR. SUTHERLAND: Objection to the form.

13 THE WITNESS: No.

14 BY MR. KURSMAN:

15 Q. Okay. And have you ever tested your skills  
16 on an inmate who was either drunk or under the  
17 influence of some illegal drugs?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: No.

20 BY MR. KURSMAN:

21 Q. Okay. And then if we go back to page 32, do  
22 you see it says, under No. 2, the second paragraph,  
23 "The simulation includes all steps of the execution  
24 process with the following exceptions: Volunteers  
25 play the roles of the condemned inmate and

1 physician. Saline solution is substituted for the  
2 lethal chemicals. And a body is not placed in the  
3 bag."

4 Without identifying any names, who are the  
5 volunteers?

6 A. Various members of the execution team.

7 Q. Okay. Now, how can you be a member of the  
8 execution team and also a volunteer?

9 A. Everyone that is on the execution team does  
10 not have necessarily to fulfill the role at every  
11 practice. So we use that individual as a volunteer.

12 Q. Okay. So just so I understand what you're  
13 saying, do you mean like a member of the restraint  
14 team?

15 A. It could be a member of the restraint team.  
16 It could be a member of the escort team. It could  
17 be any member.

18 Q. Could it be a member of the IV team?

19 A. No.

20 Q. Okay. Is IV insertion simulated?

21 A. No.

22 Q. Okay. And is the physician ever involved in  
23 the training?

24 A. It's been a while, but yes.

25 Q. I'm sorry, what was that?

1 A. I said it's been a while, but yes.

2 Q. Okay. And are botches addressed during the  
3 training?

4 A. Botches?

5 Q. Yeah, like mistakes?

6 A. If there is any recognized.

7 Q. How about emergency scenarios?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: I have did a couple in the  
10 past.

11 BY MR. KURSMAN:

12 Q. Okay. And what have you done?

13 A. Simulating individuals being removed from  
14 their cell and being removed maybe unwillingly.  
15 Simulating an individual maybe losing consciousness  
16 en route to the chamber. Simulating between the --  
17 both kits, whether an individual was actually  
18 conscious or consciousness, things of that sort.

19 Q. Say that last one again.

20 A. After the consciousness check --

21 Q. Uh-huh.

22 A. -- I may simulate as though the individual is  
23 still conscious --

24 Q. Okay. And what --

25 A. -- to --

1 Q. What happens then?

2 A. According to the protocol, signals is given  
3 to the executioner and then he proceeds with the  
4 second part of the protocol in regards to the kits  
5 that are being used.

6 Q. And you mean injecting the prisoner with more  
7 midazolam?

8 A. Yes.

9 Q. Okay. What happens if after the second  
10 injection of midazolam, meaning after you signal to  
11 the executioner, the inmate is still conscious and  
12 then the executioner injects the inmate with a  
13 second batch of midazolam? What happens if the  
14 inmate is still conscious then?

15 MR. SUTHERLAND: Can I interject? Are  
16 you talking about the practice or are you talking  
17 about real --

18 MR. KURSMAN: I'm talking about real.

19 MR. SUTHERLAND: Okay.

20 MR. KURSMAN: Real. Thanks. Sorry.

21 THE WITNESS: Never had that to happen.

22 BY MR. KURSMAN:

23 Q. But what -- what would happen if that did  
24 happen?

25 A. What would happen if that did happen during

1 an actual, live execution?

2 Q. Right. What would you do?

3 A. And we've exhausted both batches?

4 Q. Of midazolam.

5 A. Curtains will be pulled, blinds will be  
6 closed. I will consult with the doctor and advise  
7 the commissioner.

8 Q. And who makes the decision whether to  
9 proceed?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: Commissioner.

12 BY MR. KURSMAN:

13 Q. Okay. During the practices, is push rate  
14 practiced?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: I'm not there in the room,  
17 but I'm sure it is.

18 BY MR. KURSMAN:

19 Q. Okay. And do you know how fast the IV push  
20 rate is practiced?

21 A. I don't.

22 Q. Okay. Do you know how fast they push the  
23 drugs during the simulation?

24 A. I don't.

25 Q. Okay. Does anybody oversee the executioner



1 to ensure the push rate is correct?

2 A. That I wouldn't know. I know they've been  
3 trained to do it.

4 Q. And who have they been trained by?

5 A. Medical professionals.

6 Q. Okay. And without -- without giving any  
7 identifying information, what type of medical  
8 professionals do you mean?

9 A. I would say probably doctors and others.

10 Q. So it's your understanding the executioner  
11 has been trained by a doctor for his correct push  
12 rate?

13 A. I will say probably. I didn't say that they  
14 were.

15 Q. Okay.

16 A. Probably doctors and EMTs and IV members and  
17 other people as well.

18 Q. Okay. But you're not sure, you're saying?

19 A. Correct.

20 Q. Okay. And then do you see it says, under  
21 No. 3 on -- we're still on page 32, "All training  
22 that occurs is documented. The documentation  
23 includes the times and dates of the training, the  
24 participants, and the training content"?

25 A. I do see that.

1 Q. Who's responsible for this documentation?

2 A. I am.

3 Q. And where is the documentation kept?

4 A. In a binder in my safe in my office.

5 (WHEREUPON, the above-mentioned  
6 document was presented, previously marked as  
7 Exhibit Number 53.)

8 BY MR. KURSMAN:

9 Q. Okay.

10 Can we go to Exhibit 53?

11 Is this an example of that training  
12 documentation?

13 A. Yes, it is.

14 Q. And did you lead this?

15 A. I'm sorry?

16 Q. Did you lead this training session?

17 A. I don't know about this one in particular  
18 because the instructor's name has been redacted.

19 Q. Okay.

20 Let's go to page -- back to page 32. Do you  
21 see it says -- at the bottom, it says,  
22 "Executioner"? And then it says, "The Executioner  
23 receives initial and periodic instruction from a  
24 qualified medical professional"?

25 A. I'm sorry, you said 32?

1 Q. Yeah, I apologize. Exhibit 1 on page 32.

2 Oh, not Exhibit 32, Exhibit 1 --

3 A. Oh, I'm sorry.

4 Q. -- page 32. Sorry about that.

5 A. Sorry. Exhibit 1, 32. Okay.

6 Q. Do you see at the bottom it says,

7 "Executioner"?

8 A. Yes.

9 Q. And it says, "The Executioner receives  
10 initial and periodic instruction from a qualified  
11 medical professional"?

12 A. I see that, yes.

13 Q. What does this section mean?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: It means periodically he  
16 will receive instructions from a qualified medical  
17 professional.

18 BY MR. KURSMAN:

19 Q. Who is the qualified medical professional,  
20 without identifying any names?

21 A. That I wouldn't know.

22 Q. Okay. Are you -- are you present at these  
23 trainings?

24 A. No.

25 Q. Okay. Do you know what "initial training"

1 means?

2 A. "Initial" usually means beginning.

3 Q. Okay. Do you know what "periodic" means as  
4 it's used in this paragraph?

5 A. Every so often.

6 Q. Do you know how often the executioner  
7 receives training?

8 A. I do not. I just know he receives it.

9 Q. And the qualified medical professional, is it  
10 always the same individual?

11 A. That I wouldn't know.

12 Q. Okay. Is the executioner the only person who  
13 receives this additional training?

14 A. I would say the executioner and his  
15 assistants.

16 Q. Okay. Do you receive any additional  
17 training?

18 A. No.

19 MR. SUTHERLAND: Objection to the form.

20 BY MR. KURSMAN:

21 Q. Okay. Do you know when the last time the  
22 executioner received this additional training?

23 A. Do not, no.

24 Q. Okay. Do you know the next time they'll  
25 receive this training?

1 A. No.

2 (WHEREUPON, the above-mentioned  
3 document was presented, previously marked as  
4 Exhibit Number 49.)

5 BY MR. KURSMAN:

6 Q. Okay. Let's go to Exhibit 49.

7 If you could go to that third page of  
8 Exhibit 49.

9 Well, I apologize. Let's go to the first  
10 page first so you can see what Exhibit 49 is. Do  
11 you see it says at the top, "Defendant Tony Mays'  
12 Supplemental Response to Plaintiff's First Set of  
13 Interrogatories"?

14 A. I do.

15 Q. Okay. So let's go to page 3. And do you see  
16 it says, under E, "IV 2-Executioner has previously  
17 received IV training by EMTs and participates in  
18 monthly training/practice sessions during which  
19 saline is injected through the IV into the median  
20 cubital vein of participant"?

21 A. I see that, yes.

22 Q. Is this the instruction that's referenced on  
23 page 32?

24 A. I think I said that earlier, did I not?

25 Q. I'm not sure. I must have misheard you.

1 A. Well, yes, I think that's what I said.

2 Q. Okay. And do you know what a median cubital  
3 vein is?

4 A. No.

5 Q. Okay. And do you know what a antecubital  
6 fossa area is?

7 A. No.

8 MR. KURSMAN: Okay.

9 I think -- how long have we been going  
10 during this? I think it may be a good time for a  
11 break right now, if that's fine with all of you.  
12 Okay.

13 THE VIDEOGRAPHER: One moment, please.

14 MR. KURSMAN: Sure.

15 THE VIDEOGRAPHER: Going off the record  
16 at 12:18 p.m.

17 (Lunch recess from 12:21 p.m. to  
18 1:05 p.m.)

19 THE VIDEOGRAPHER: Back on the record at  
20 1:02 p.m.

21 BY MR. KURSMAN:

22 Q. Good afternoon, Warden Parker [sic]. Is  
23 there anything during the break that you thought of  
24 that you want to correct in terms of your answers  
25 that you gave this morning?

1 A. No.

2 Q. Okay. Now, while we were on break, I  
3 actually read an article saying that you sent a  
4 message to your staff announcing your retirement; is  
5 that right?

6 A. No, sir.

7 MR. KURSMAN: Oh, I apologize. It's the  
8 commissioner. I'm sorry. Okay. I read -- I read  
9 that wrong. Okay. I apologize for that, everybody.

10 THE WITNESS: No, sir.

11 BY MR. KURSMAN:

12 Q. Okay. Okay. Okay.

13 Let's turn to page 34 of -- or 34 -- yeah,  
14 page 34 of Exhibit 1.

15 And I apologize again for that.

16 A. That's okay.

17 Q. And do you see on page 34 that it describes  
18 the three chemicals used in the lethal injection  
19 procedure?

20 A. Yes.

21 Q. And it has midazolam, vecuronium bromide, and  
22 potassium chloride?

23 A. Yes.

24 Q. Okay. What is your understanding of the  
25 purpose of each drug in the execution protocol?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: Early on we'll explain the  
3 three drugs and I guess the purposes of it.

4 Midazolam, I may be wrong, but I think it's designed  
5 to put you to sleep, make you go to sleep; is that  
6 correct?

7 BY MR. KURSMAN:

8 Q. I -- I unfortunately can't answer questions.

9 A. Okay.

10 Q. I just --

11 A. That's fine.

12 I think the midazolam makes you sleepy or go  
13 to sleep. The vecuronium bromide, I guess,  
14 basically paralyzes the body. And the potassium  
15 chloride is designed to affect the heart. I think  
16 I'm right.

17 Q. And do you know what type of drug midazolam  
18 is?

19 A. I do not.

20 Q. Okay. Were you aware that it's a  
21 benzodiazepine?

22 A. No.

23 Q. Okay. So are you aware that it's the same  
24 classification as, like, a drug such as Xanax?

25 A. No.



1 Q. Okay. And do you know whether midazolam is  
2 typically used as an anesthetic in hospital  
3 settings?

4 A. I don't.

5 MR. SUTHERLAND: Objection to the form.

6 BY MR. KURSMAN:

7 Q. Okay.

8 A. No.

9 Q. Are you aware that midazolam has a ceiling  
10 effect?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: No.

13 BY MR. KURSMAN:

14 Q. Do you know what a ceiling effect is?

15 A. No.

16 Q. Okay. Are you aware that midazolam may have  
17 a paradoxical effect?

18 A. No.

19 Q. And do you know what a paradoxical effect is?

20 A. No.

21 Q. Okay. Are you aware that midazolam is highly  
22 acidic?

23 A. No.

24 Q. And I think you said a second ago that  
25 vecuronium bromide was a paralytic?

1 A. I think so.

2 Q. Do you know why Tennessee is using vecuronium  
3 bromide as the second drug in the --

4 MR. SUTHERLAND: Objection to the form.

5 BY MR. KURSMAN:

6 Q. -- execution protocol?

7 A. No.

8 Q. Okay. Could Tennessee conduct an execution  
9 using only the first and third drugs?

10 MR. SUTHERLAND: Same objection.

11 THE WITNESS: I couldn't answer that  
12 because I've only used the three. I've never used  
13 the two, so I don't know if they could or not.

14 BY MR. KURSMAN:

15 Q. Okay. And do you know what a paralytic  
16 means?

17 A. Paralytic sounds as though it will paralyze  
18 you.

19 Q. So could you tell me how you would be able to  
20 assess an inmate's consciousness as defined in the  
21 protocol after they were injected with vecuronium  
22 bromide?

23 MR. SUTHERLAND: Objection, form.

24 THE WITNESS: If my memory serves me  
25 correctly, I think the consciousness check is made

1 before the drug is injected.

2 BY MR. KURSMAN:

3 Q. And that's right. But if -- we talked  
4 earlier that if the inmate wasn't declared dead  
5 after all three, that you would reassess  
6 consciousness after they got the second dose of  
7 midazolam.

8 So my question is just how would you be able  
9 to describe -- how would you be able to assess an  
10 inmate's consciousness if they were already  
11 injected with vecuronium bromide?

12 A. That I would not know.

13 Q. Okay. And do you know what type of drug  
14 potassium chloride is?

15 A. I do not.

16 Q. And do you know what will happen to the  
17 inmate if the inmate is administered the second and  
18 third drugs and they are not insensate to pain?

19 A. I would not -- do not know.

20 Q. Okay. Do you know how the amount of each  
21 dose was determined?

22 A. I don't.

23 Q. Do you know who made that determination?

24 A. No.

25 Q. Do you know if any of the drugs are diluted

1 before they're administered?

2 A. I'm thinking -- I'm not for sure. I'm  
3 thinking maybe the midazolam maybe.

4 Q. Okay. And are any of the drugs  
5 reconstituted?

6 A. Reconstituted?

7 MR. SUTHERLAND: Objection, form.

8 BY MR. KURSMAN:

9 Q. Yeah, reconstituted.

10 A. I would -- you mean if it's made over?

11 Q. Yes.

12 A. I'm thinking the potassium chloride and the  
13 midazolam may be.

14 Q. Okay. Do you know if bacteriostatic water  
15 and saline are the same things?

16 A. I would say two different types of water.

17 Q. Okay. Does the bacteriostatic water, does it  
18 come in a bag or a vial?

19 A. A vial.

20 Q. And does the saline come in a bag or a vial?

21 A. A bag.

22 Q. Do you know if you can use them  
23 interchangeably?

24 A. I don't know that.

25 Q. And do you discard the bags or the vials

1 after each rehearsal?

2 A. Yes.

3 Q. And do you discard them after each execution?

4 A. Yes.

5 Q. Okay. And when the executioner is diluting  
6 the drugs, do you know how they assess the proper pH  
7 level?

8 A. I don't.

9 Q. Okay. Now, let's go to page 34. And do you  
10 see, at that full paragraph, it says, "Chemicals  
11 used in lethal injection executions will either be  
12 FDA-approved commercially manufactured drugs; or,  
13 shall be compounded preparations prepared in  
14 compliance with pharmaceutical standards consistent  
15 with the United States Pharmacopeia guidelines and  
16 accreditation Departments, and in accordance with  
17 applicable licensing regulations"?

18 A. I see that, yes.

19 Q. Do you know what the difference between a  
20 compounded and manufactured drug is?

21 A. Compounded sounds as though it will be mixed  
22 with something else or something additive.  
23 Manufactured sounds as though it will come in its  
24 natural state.

25 Q. Do you know if any of the drugs used for

1 executions in Tennessee are compounded?

2 A. Yes.

3 Q. Which ones?

4 A. Midazolam and potassium chloride.

5 Q. And do you all at TDOC do the compounding?

6 A. Yes.

7 Q. Okay. And who does that?

8 MR. SUTHERLAND: I'm going to object to  
9 the extent that you're asking for a question that  
10 might lead to the identity of an individual.

11 BY MR. KURSMAN:

12 Q. Just by title only.

13 A. I would say the executioner.

14 Q. Okay. And do you ever use expired drugs?

15 A. No.

16 Q. Okay. Who would decide whether to use  
17 expired drugs?

18 A. The --

19 MR. SUTHERLAND: Objection to the form.

20 THE WITNESS: Wouldn't be me.

21 BY MR. KURSMAN:

22 Q. Okay. Well, would -- do you have the power,  
23 as warden, to say, "We will never use expired drugs  
24 in an execution"?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: I would hope so.

2 BY MR. KURSMAN:

3 Q. Okay. What does "consistent with USP  
4 guidelines and accreditation departments," as used  
5 in this paragraph, mean to you?

6 MR. SUTHERLAND: Objection, form.

7 THE WITNESS: It's whatever they would  
8 describe and prescribe for it to be.

9 BY MR. KURSMAN:

10 Q. And what about, "in accordance with  
11 applicable licensing regulations"?

12 MR. SUTHERLAND: Same objection.

13 THE WITNESS: Basically the same.

14 BY MR. KURSMAN:

15 Q. Okay. And how do you ensure that that will  
16 happen?

17 A. I don't.

18 Q. Who does?

19 MR. SUTHERLAND: I'm going to object to  
20 the -- to the extent that it's going to lead to the  
21 identification of an individual.

22 Don't identify any specific person.

23 THE WITNESS: That I wouldn't know.

24 BY MR. KURSMAN:

25 Q. Is it the drug procurer?

1 MR. SUTHERLAND: Let me just interrupt  
2 just a second, Alex. Just so -- and we've been  
3 doing this for the last couple depositions, but we  
4 agree that an objection to form preserves all  
5 objections so we're not doing speaking objections?

6 MR. KURSMAN: Yeah, I agree to that on  
7 the record.

8 MR. SUTHERLAND: Okay.

9 MR. KURSMAN: Yes.

10 MR. SUTHERLAND: I just -- I wanted to  
11 make sure because I keep saying the same thing, and  
12 I think in the first deposition you and Rob had a  
13 discussion. You asked him not to do speaking  
14 objections, and so we've just done objections to  
15 form.

16 MR. KURSMAN: And we agree to that --

17 MR. SUTHERLAND: Okay.

18 MR. KURSMAN: -- yes.

19 MR. SUTHERLAND: Yeah.

20 MR. KURSMAN: That preserves all  
21 objections. The only objection I would say to make  
22 is the secrecy objection.

23 MR. SUTHERLAND: Yes, sir, yep.

24 BY MR. KURSMAN:

25 Q. Is it the drug procurer?



1 A. That I wouldn't know.

2 Q. Okay. Do you know what is done to ensure  
3 that compounded chemicals are prepared in compliance  
4 with USP guidelines?

5 A. That I wouldn't know.

6 Q. Do you know who in TDOC ensures that?

7 MR. SUTHERLAND: Objection to the extent  
8 that it could lead to the identification of an  
9 individual.

10 Don't say a person's name.

11 THE WITNESS: Not that I know of. I  
12 would -- if I had to venture a guess, and I don't  
13 like to guess, so I would say I don't know.

14 BY MR. KURSMAN:

15 Q. Okay.

16 A. I would say -- I would like to say if I was  
17 procuring something that I would be the one that  
18 would know how that needed to be used.

19 Q. Sure. Okay. And so I assume you don't know  
20 what is done to ensure that these compounded  
21 chemicals are prepared in compliance with applicable  
22 licensing regulations either; is that right?

23 A. That's right.

24 Q. Okay. Let's go to page 35. Do you see at  
25 the top it says, "Compounded Preparations:

1 Procurement, Storage, and Accountability"?

2 A. Uh-huh.

3 Q. And then if you go down to 1 it says,

4 "Storage of LIC"?

5 A. Uh-huh.

6 Q. It says --

7 A. Yes.

8 Q. -- "When the LIC is received, a member of the  
9 Execution Team and the Warden take the LIC to the  
10 armory area of Building 7 at RMSI"?

11 A. I see that, yes.

12 Q. Do you do this?

13 A. Yes.

14 Q. Okay. At this time do you check the  
15 temperature of the drugs?

16 A. When it is received?

17 Q. Yes.

18 A. The way it comes, it come compacted in -- not  
19 ice, but dry ice.

20 Q. Okay.

21 A. So it is frozen.

22 Q. The compounded chemicals?

23 A. The -- yes.

24 Q. Okay. And how can you ensure that it's  
25 completely frozen?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: I would say by looking at  
3 it. It's not liquefied, it's frozen.

4 BY MR. KURSMAN:

5 Q. Okay. So what do you do when you receive the  
6 package of drugs?

7 A. When it is come -- when it comes, it is  
8 carried to the armory to be put away, and it is put  
9 away by the -- I guess the procurer.

10 Q. And do you -- do you receive it through mail?

11 A. That I wouldn't know.

12 Q. Okay. Do you know how long it travels in  
13 interstate --

14 A. That I wouldn't know. I don't receive it.

15 Q. Oh, you don't receive it?

16 A. No.

17 Q. Okay. Do you take the chemicals to the  
18 armory building?

19 A. In conjunction with the commissioner's  
20 designee.

21 Q. And the commissioner's designee is the drug  
22 procurer?

23 A. I couldn't answer that. I wouldn't know.

24 Q. I'm just trying to find out who is taking the  
25 drugs into the armory with you.

1 A. It would be me, the commissioner's designee,  
2 and a member of the execution team.

3 Q. Okay. So maybe I should ask this. Without  
4 identifying any names, just yes or no, do you know  
5 the identity of the drug procurer?

6 A. No.

7 Q. Okay.

8 And then if you see, in -- still in  
9 Section 1, "The LIC is placed in an unmovable heavy  
10 gauge steel container with security grade locks."

11 Do you see that?

12 A. Yes.

13 Q. Okay. Is that where the compounded lethal  
14 injection chemicals are kept?

15 A. Yes.

16 Q. Okay. So it's your understanding that  
17 they're kept in a heavy gauge steel container?

18 A. Yes.

19 Q. Do you monitor the temperatures of that heavy  
20 gauge steel container?

21 A. The heavy gauge steel container is not --  
22 doesn't have to be monitored temperature-wise.

23 Q. Okay. And can you explain why?

24 A. Because it doesn't require for it to be at a  
25 certain temp.

1 Q. Okay. So it's your understanding that the  
2 frozen compounded chemicals are brought into the  
3 office and then placed in a heavy gauge steel  
4 container?

5 A. The ones that are frozen does not go into  
6 the -- the manufactured goes into the freezer. The  
7 compounded one that's not frozen, that goes into the  
8 dry container.

9 Q. Okay. Let's talk about the frozen ones.

10 A. Okay.

11 Q. Okay. Where do the frozen ones go?

12 A. It goes into a freezer.

13 Q. Okay. Who decided to store it in the  
14 freezer?

15 A. According to the protocol.

16 Q. Well, can you show me in the protocol where  
17 it says that compounded preparations should be  
18 stored in a freezer?

19 A. Not compounded ones.

20 Q. Okay. Well, if I were to tell you that  
21 compounded preparations, they're the ones that come  
22 frozen, would that refresh your recollection as to  
23 which ones are coming frozen?

24 A. I'm trying to ensure which ones are frozen  
25 and which one is compounded. The commercially ones

1 are -- let me get this right. Compounded ones is  
2 the -- is the ones that is recommended by the  
3 pharmacy as how to be handled. So, therefore,  
4 that's the instructions that we follow.

5 Q. So you follow the pharmacy instructions?

6 A. Correct.

7 Q. For the compounded preparations?

8 A. Correct.

9 Q. And the pharmacy instructions tell you to put  
10 them in the freezer?

11 A. According to the procurer -- not the  
12 procurer, according to the commissioner's designee,  
13 that is what the prescription would describe.

14 Q. Okay. Now, who made the decision that you  
15 could deviate from the protocol and keep them in the  
16 freezer rather than in the -- in the heavy gauge  
17 container?

18 A. (Pause) If I may refer to paragraph --  
19 page 34, at the bottom, "Chemicals used in lethal  
20 injection execution will either be FDA-approved  
21 commercially manufactured or shall be compounded  
22 preparation in compliance with the pharmaceutical  
23 standards consistent with United States" -- what you  
24 just read, which is which -- the midazolam and the  
25 potassium chloride is the compounded ones, so they

1 are kept in the dry area. The vecuronium bromide,  
2 if I'm correct, would be kept in a -- in the  
3 freezer.

4 Q. Okay. So I think your understanding is not  
5 actually right. I think the midazolam and the --  
6 and the --

7 A. Potassium chloride.

8 Q. -- potassium chloride are kept in the  
9 freezer.

10 A. Okay.

11 Q. My question is, under No. 1 for compounded  
12 preparations --

13 A. Uh-huh.

14 Q. -- it says, "The LIC is placed in an  
15 unmovable heavy gauge steel container with security  
16 grade locks."

17 A. Uh-huh.

18 Q. Okay. Why -- why are the compounded  
19 preparations, the midazolam and the potassium  
20 chloride, why are they not kept where the protocol  
21 says for them to be kept?

22 A. They are kept where the protocol said they're  
23 supposed to be kept.

24 Q. And where is that?

25 A. If it's -- if according to what the

1 pharmacist recommend, midazolam and potassium  
2 chloride goes into the freezer, that's where they're  
3 kept. If -- the vecuronium bromide is kept in a dry  
4 storage area.

5 Q. Okay. So page 35 talks about compounded  
6 preparations. And we can go to future exhibits so I  
7 can show you what compounded preparations you have.  
8 And the compounded preparations that TDOC gets are  
9 midazolam and potassium chloride.

10 Now, for compounded preparations the  
11 protocol says -- and we talked about how the  
12 protocol is mandatory. The protocol says the LIC  
13 is placed in an unmoveable heavy gauge steel  
14 container.

15 MR. SUTHERLAND: Your Honor --  
16 Your Honor. Alex, excuse me. Can you refer to him  
17 specifically where you are just so he can follow  
18 with you?

19 MR. KURSMAN: Sure.

20 BY MR. KURSMAN:

21 Q. So I'm on paragraph 1 under "Storage LIC."

22 A. Okay.

23 Q. Do you see at the very bottom it says, "The  
24 LIC is placed in an unmovable heavy gauge steel  
25 container"?



1 A. I do.

2 Q. And do you see at the top it's talking about  
3 compounded preparations?

4 A. I do.

5 Q. So my question is why are the compounded  
6 preparations not secured in an unmovable heavy gauge  
7 steel container as the protocol directs?

8 A. If they are compounded and they go into the  
9 heavy gauge steel, that's where they go.

10 Q. Okay. Well, so let's -- let's see how I can  
11 do this. But let's say they're not stored in the  
12 heavy gauge steel container, right? Let's say  
13 midazolam and potassium chloride are stored in the  
14 freezer, right? Who would make that decision to say  
15 let's deviate from the protocol and put them in the  
16 freezer instead of a --

17 MR. SUTHERLAND: Objection.

18 BY MR. KURSMAN:

19 Q. -- heavy gauge steel container?

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: It wouldn't be me.

22 BY MR. KURSMAN:

23 Q. Would you have to sign off on that decision?

24 A. No.

25 Q. Okay. Even though you're responsible for

1 bringing the drugs into the armory area?

2 A. If it belonged to that area and whatever's  
3 prescribed according to the pharmacist, that's the  
4 way they're stored.

5 Q. Okay. So who oversees the person who's  
6 storing the execution drugs?

7 A. That would be me.

8 Q. Okay. And you see this person who's storing  
9 the execution drugs, right?

10 A. I do.

11 Q. Have you seen that they store the execution  
12 drugs not in accordance with the protocol?

13 A. No.

14 MR. SUTHERLAND: Objection to the form.

15 BY MR. KURSMAN:

16 Q. Okay. I want to talk about the freezer and  
17 the refrigerator. Do you know how temperatures are  
18 monitored of the freezer and the refrigerator?

19 A. By thermometer.

20 Q. Okay. Is there any way to monitor that  
21 temperature when the doors to the freezer and  
22 refrigerator are shut?

23 A. No.

24 Q. Okay. So there's no external thermometer on  
25 the freezer or the refrigerator?

1 A. No.

2 Q. So while those doors are shut, you don't know  
3 what the exact temperature is inside the freezer or  
4 the refrigerator, right?

5 A. Correct.

6 Q. Okay. How do you know that the refrigerator  
7 or the freezer are working properly the entire time  
8 the drugs are stored in there?

9 A. The refrigerator and freezer is only a backup  
10 system, so it's constantly -- it's constantly  
11 working properly at all times.

12 Q. Are you aware that the refrigerator and  
13 freezer fluctuate in temperature?

14 A. No, I'm not.

15 Q. Okay. Do you know what temperature  
16 compounded drugs should be kept at in the  
17 refrigerator and freezer?

18 A. No.

19 Q. Okay. And who checks the temperature in the  
20 refrigerator and freezer?

21 A. I check it. The commissioner designee check  
22 it when it's -- when we inventory it and when it's  
23 delivered.

24 Q. Okay. So you check it once it's delivered  
25 and when it's inventoried?

1 A. Yes.

2 Q. And every time you check, you have to break  
3 the seal, right?

4 A. Yes.

5 Q. Okay. And every time you break the seal,  
6 that would be recorded, right?

7 A. Yes.

8 (WHEREUPON, the above-mentioned  
9 document was presented, previously marked as  
10 Exhibit Number 2.)

11 (WHEREUPON, the above-mentioned  
12 document was presented, previously marked as  
13 Exhibit Number 4.)

14 BY MR. KURSMAN:

15 Q. Okay. So let's look at Exhibit 2 and 4.  
16 Have you seen these exhibits before?

17 A. No.

18 Q. Okay. And do you see that they're exhibits  
19 for midazolam and for potassium chloride?

20 A. Yes.

21 Q. Okay. And do you see this calls for the  
22 compounded midazolam on Exhibit 2 and the compounded  
23 potassium chloride on Exhibit 4 to be stored in the  
24 freezer?

25 A. Yes.

1 Q. Okay. And in your mind is that inconsistent  
2 with the paragraph on page 35 we just discussed?

3 MR. SUTHERLAND: Could you refer him to  
4 which paragraph?

5 MR. KURSMAN: Yeah.

6 BY MR. KURSMAN:

7 Q. So it would be "Storage of LIC" under  
8 Section 1, "The LIC is placed in an unmovable heavy  
9 gauge steel container with security grade locks."

10 A. It is stored where it's stored. We have more  
11 than one LIC, we have three.

12 Q. Right. No, I understand that. But my  
13 question is these two compounded chemicals,  
14 potassium chloride and midazolam --

15 A. Correct.

16 Q. -- the instructions say store them in a  
17 freezer when you receive them.

18 Is that inconsistent with the directions in  
19 the protocol of what to do with compounded  
20 chemicals?

21 MR. SUTHERLAND: Objection to the form.

22 THE WITNESS: I would say no.

23 BY MR. KURSMAN:

24 Q. No? Why?

25 A. Why? Because it tells you to be in

1 consistence the way it is prescribed by the  
2 pharmacist, and if the pharmacist says  
3 refrigerator/freezer, it goes in the  
4 refrigerator/freezer for those compounded  
5 substances.

6 Q. Okay. But do you see where the protocol  
7 says, "The LIC is placed in an unmovable heavy gauge  
8 steel container"?

9 A. That would be the vecuronium bromide.

10 Q. So your understanding is that instruction  
11 under "Storage of LIC" is for the vecuronium  
12 bromide?

13 A. It's consistent with both of them. It's  
14 telling you how would it be stored, that's the way  
15 you store it.

16 Q. Okay. So when you read under Section 1,  
17 "Storage of LIC," the sentence that we keep  
18 discussing, "The LIC is placed in an unmovable heavy  
19 gauge steel container with security grade locks,"  
20 you take that to mean it's talking about the  
21 vecuronium bromide?

22 A. Correct.

23 Q. Okay. Are you aware that the vecuronium  
24 bromide is not compounded?

25 A. Yes.

1 Q. Okay. And you do see at the top that this is  
2 for compounded preparations?

3 A. That is true.

4 Q. Okay. Do you have instructions for  
5 vecuronium bromide?

6 A. Whatever the pharmacist's instructions are.

7 Q. Okay. And who did the pharmacist give  
8 instructions to, if you know?

9 A. I don't know.

10 MR. SUTHERLAND: I'm going to object to  
11 the extent that it calls for the identification --  
12 don't identify an individual.

13 THE WITNESS: I don't know.

14 BY MR. KURSMAN:

15 Q. Have you ever spoken to the pharmacist?

16 A. No.

17 Q. Okay. Let's go back to Exhibit 2. Do you  
18 see, under "Preparation," it says No. 1?

19 A. Yes.

20 Q. "Remove 4 vials of midazolam from the freezer  
21 and place in refrigerator 24 hours prior to use to  
22 allow to thaw"?

23 A. Yes.

24 Q. Okay. What does that mean to you?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: That means that if an  
2 execution is scheduled for today, we need to remove  
3 it on yesterday, 24 hours prior.

4 BY MR. KURSMAN:

5 Q. And how do you ensure that the vials are  
6 thawed?

7 MR. SUTHERLAND: Same objection.

8 THE WITNESS: Remove them from the  
9 freezer and put them in the refrigerator and the  
10 next day, when you go and check them, give them to  
11 whoever, then whoever receives them, they ensure  
12 that they're thawed.

13 BY MR. KURSMAN:

14 Q. And when you say "whoever," without  
15 identifying that person, who are you talking about?

16 A. The executioner.

17 Q. Okay. And do you think No. 1, this  
18 instruction we just read, do you think that's  
19 consistent with the protocol instructing that the  
20 compounded chemicals are stored in a heavy gauge  
21 steel container?

22 (Cell phone interruption.)

23 THE WITNESS: I'm sorry.

24 BY MR. KURSMAN:

25 Q. That's okay.



1 A. That would be correct.

2 Q. That would be correct, it is consistent or  
3 that would be correct, it's not consistent?

4 A. That would be correct in being consistent.

5 Q. Inconsistent?

6 A. Consistent.

7 Q. Okay. So when the protocol says store in a  
8 heavy gauge steel container, you think it's  
9 consistent to just store in a freezer instead?

10 A. Whatever is designed to be in the freezer, it  
11 goes in the freezer, the compounded ones. And  
12 whatever is designed to go into the steel cabinet  
13 goes in that.

14 Q. Okay. Do you see on No. 3, under  
15 "Preparation," it says, "On the day of use, retrieve  
16 the necessary vials of midazolam from the  
17 refrigerator and remove the blue seal from the top  
18 of each vial of midazolam"?

19 Do you see that?

20 A. I do.

21 Q. Okay. Do you know why the protocol doesn't  
22 call for the use of a refrigerator for compounded  
23 chemicals?

24 A. I don't know.

25 Q. Okay. And can you tell me how the drugs are

1 transported to DOC?

2 MR. SUTHERLAND: Objection, form.

3 THE WITNESS: I don't know.

4 BY MR. KURSMAN:

5 Q. Okay. Are you aware that they're transported  
6 overnight?

7 A. I don't know that either.

8 Q. Do you know if the compounded and  
9 manufactured drugs are transported together?

10 A. I don't know that either.

11 Q. Okay. You -- you take the drugs, once you  
12 receive them, into the armory area, right?

13 A. I go with the individual that brings them.

14 Q. So --

15 A. I don't take them.

16 Q. So you don't see the drugs at that point?

17 A. I go into the area and I watch them be put  
18 away.

19 Q. Okay. But you're --

20 A. I don't handle them.

21 Q. So you're unaware if some of the drugs are  
22 compounded and some are manufactured at the same  
23 time?

24 A. Correct. I just go with what the protocol  
25 says they are.

1 Q. Okay. Do you know if the manufactured drugs  
2 come frozen?

3 A. That would be the vecuronium bromide? No.

4 Q. Okay. Does the -- do you know if the  
5 pharmacist encloses instructions for storing and  
6 preparing with each shipment?

7 A. I wouldn't know.

8 Q. Okay. So you don't actually see the shipment  
9 that comes in when the drugs arrive at TDOC?

10 A. No.

11 Q. Okay. And do you know how TDOC ensures that  
12 the drugs are sterile at the time of use?

13 MR. SUTHERLAND: Objection, form.

14 THE WITNESS: No.

15 BY MR. KURSMAN:

16 Q. Okay. So at the time of use, what do you do  
17 with the drugs?

18 A. At the time of the use?

19 Q. Yeah, meaning on the date of an execution.

20 A. I don't do anything with them.

21 Q. Do --

22 A. At the time of use?

23 Q. On the day of execution, yes.

24 A. I don't do anything with them.

25 Q. Are you the one who breaks the seal and

1 opens --

2 A. At that point I do.

3 Q. Okay. And what do you do at that point?

4 A. I break the seal and I issue them to the  
5 individual that receives them for purposes of  
6 execution.

7 Q. And is that the executioner?

8 A. Correct.

9 Q. Okay. And does anybody else look at the  
10 drugs at that time?

11 A. The executioner, myself, and my designee.

12 Q. And --

13 A. But we don't look at them, we're there. The  
14 executioner gets them himself and he takes them  
15 himself. I just open the freezer.

16 Q. Okay. So let me understand what happens on  
17 the day of an execution. So when you say your  
18 designee, are you talking about the associate  
19 warden?

20 A. Correct.

21 Q. Okay. So you and the associate warden are in  
22 the armory area?

23 A. Correct.

24 Q. And the executioner comes in?

25 A. Correct.

1 Q. And you break the seal?

2 A. Correct.

3 Q. And then the executioner takes a certain  
4 number of vials of midazolam?

5 A. Correct.

6 Q. He takes a certain number of vials of  
7 vecuronium bromide?

8 A. Correct.

9 Q. And he takes a certain number of vials of  
10 potassium chloride?

11 A. Correct.

12 Q. Does anybody else look at those drugs once he  
13 takes those drugs?

14 A. No.

15 Q. Okay. And what does he do with those drugs  
16 once he takes them?

17 MR. SUTHERLAND: Objection, form.

18 THE WITNESS: He takes them with him to  
19 the execution chamber.

20 BY MR. KURSMAN:

21 Q. Okay.

22 A. The dispense room.

23 Q. And where does he put them once they're in  
24 the execution chamber?

25 MR. SUTHERLAND: Same objection.

1 THE WITNESS: That I don't know.

2 BY MR. KURSMAN:

3 Q. And does he reconstitute any of the drugs?

4 MR. SUTHERLAND: Same objection.

5 THE WITNESS: That I don't know.

6 BY MR. KURSMAN:

7 Q. And does he mix any of the drugs?

8 MR. SUTHERLAND: Same objection.

9 THE WITNESS: That I don't know.

10 BY MR. KURSMAN:

11 Q. And does anybody oversee him doing that?

12 A. That I don't know.

13 Q. Okay. And does he --

14 A. I'm not there.

15 Q. Okay. And does he dilute any of the drugs?

16 MR. SUTHERLAND: Same objection.

17 THE WITNESS: Not there.

18 BY MR. KURSMAN:

19 Q. Okay. Do you see him doing that during  
20 training sessions?

21 A. No.

22 Q. Okay. Now, let's turn to Exhibit 4.

23 And do you see this is the instructions for  
24 potassium chloride?

25 A. Yes.

1 Q. Do you know who provided these instructions?

2 A. No.

3 Q. Okay. Do you know whether TDOC follows these  
4 instructions?

5 MR. SUTHERLAND: Objection, form.

6 THE WITNESS: Yes.

7 BY MR. KURSMAN:

8 Q. Yes, you do know that they follow these  
9 instructions?

10 A. Certain portions of it.

11 Q. Okay. Which portions do they follow?

12 A. The portion that I follow is 1. It's 1.

13 Q. Are there any portions that aren't followed?

14 A. Other than 1, I would not know.

15 Q. Okay. And do you think, under No. 1,  
16 "Preparation: Remove 2 vials of potassium chloride  
17 from the freezer and place in refrigerator 24 hours  
18 prior to use to allow to thaw," do you think that's  
19 inconsistent with the protocol?

20 A. No.

21 Q. Okay. And who is responsible for following  
22 these instructions?

23 MR. SUTHERLAND: Objection to the extent  
24 that it calls for the identification of an  
25 individual.

1 Don't name anyone.

2 THE WITNESS: Anyone that has anything  
3 to do with these instructions.

4 BY MR. KURSMAN:

5 Q. So would that be anyone aside from you and  
6 the drug procurer?

7 A. Removing two vials of potassium chloride,  
8 that's the day prior to the execution. It could be  
9 me, yes, and the drug procurer, or me and the  
10 commissioner's designee.

11 Q. And it's your belief that this is consistent  
12 with the protocol?

13 A. Yes.

14 Q. Okay. Do you see, under No. 14 on the second  
15 page of this exhibit, it says, "Inspect the syringe  
16 now filled with potassium chloride. Inspect to  
17 ensure you see no particles or discoloring. Set  
18 aside."

19 Do you see that?

20 A. I do.

21 Q. Okay. Do you know who does this?

22 A. By reading that I would say it would probably  
23 be the executioner.

24 Q. And are you sure that always happens?

25 A. No I'm not --



1 MR. SUTHERLAND: Objection, form.

2 THE WITNESS: I'm not sure because I'm  
3 not there.

4 BY MR. KURSMAN:

5 Q. Okay. So who oversees the executioner to  
6 make sure he's doing this?

7 A. That I would not know.

8 Q. Do you know what happens if discoloration is  
9 present?

10 A. No.

11 Q. Okay. Do you know why the instructions don't  
12 say what to do if --

13 MR. SUTHERLAND: Objection, form.

14 BY MR. KURSMAN:

15 Q. -- discoloration is present?

16 A. No.

17 Q. Okay. Do you know what to do if there are  
18 particles?

19 MR. SUTHERLAND: Objection, form.

20 THE WITNESS: Other than reading what's  
21 in front of me, that would probably let me know, but  
22 other than that, no.

23 BY MR. KURSMAN:

24 Q. Okay. So what would you do if the  
25 executioner told you that there was either

1     discoloration or particles in the syringe?

2                 MR. SUTHERLAND:  Objection, form.

3                 THE WITNESS:  It has never happened, but  
4     if he told me that that had taken place, I would  
5     probably contact the commissioner.

6     BY MR. KURSMAN:

7     Q.         Okay.  And who would then decide if the  
8     execution moved forward, without disclosing names?

9     A.         As always, the commissioner.

10    Q.         Okay.  Now, let's go to page 35 of Exhibit 1.  
11                 Do you see it says, in No. 3 under "Storage  
12    of LIC," it says, "The LIC on hand is monitored for  
13    expiration dates.  All of the LIC boxes/bottles  
14    have an expiration date and all are in tamper-proof  
15    containers.  As the LIC reaches its expiration  
16    date, it shall be disposed of by hazardous waste  
17    pick-up."

18                 Do you see that?

19    A.         Yes.

20    Q.         What's the point of that paragraph?

21                 MR. SUTHERLAND:  Objection, form.

22                 THE WITNESS:  I would say the point of  
23    it, if it's expired, it has to be disposed of and it  
24    tells you how to dispose of it.

25    ///  
26

1 BY MR. KURSMAN:

2 Q. Okay. And is that a mandatory provision of  
3 the protocol?

4 A. Yes.

5 Q. Okay. Are you responsible for monitoring the  
6 expiration dates?

7 A. In conjunction, yes.

8 Q. In conjunction with who, without identifying  
9 anybody?

10 A. Designee.

11 Q. And the designee would be the associate  
12 warden?

13 A. The commissioner's designee.

14 Q. The -- so who is the commissioner's designee,  
15 without identifying anyone?

16 A. I just identify him as the designee.

17 Q. Okay. And is that the same person as the  
18 drug procurer?

19 A. I wouldn't know.

20 Q. Okay. Right. I apologize.

21 And have you disposed of all the lethal  
22 injection chemicals once they've reached their  
23 expiration dates?

24 A. Yes.

25 Q. You have?

1 A. Yes.

2 Q. Okay. Does TDOC have any lethal injection  
3 chemicals in its possession that's currently  
4 expired?

5 A. No.

6 Q. Okay. We can -- we'll talk about that in a  
7 minute.

8 Let's go to paragraph 2. And if you go to  
9 the third line, under "Storage of LIC" on page 35,  
10 it says, "There is only one key to access the  
11 storage container."

12 And then -- skip the next sentence. Then it  
13 says, "The Warden also has the pattern key to the  
14 container in his -- in his possession. There are  
15 no duplicates produced. The Warden surrenders  
16 the key to no one other than one member of the  
17 Execution Team designated for inventorying the  
18 LIC."

19 Do you see that?

20 A. I do.

21 Q. Without identifying anyone, who is that  
22 person that you give the key to?

23 A. That would be my designee.

24 Q. And that would be the associate warden?

25 A. Security.

1 Q. Okay. Now, let's go to the next page,  
2 page 36, and paragraph 4 under "Accountability of  
3 LIC." Do you see it says, "Upon receipt of the LIC,  
4 the Warden or designee proceeds to the armory  
5 storage area, secures the LIC, and adjusts the  
6 inventory properly [sic]. Prior to the LIC being  
7 placed in storage, the expiration date and lot  
8 number or other identifying marking is recorded to  
9 ensure that the LIC is properly disposed of at the  
10 time of expiration."

11 Do you see that?

12 A. I do.

13 Q. Do you do this?

14 A. I do.

15 Q. Okay. How do you know where to store each  
16 drug?

17 A. Based on the prescription according to the  
18 designee that delivers it.

19 Q. And are you the person who is storing each of  
20 the drugs?

21 A. In --

22 MR. SUTHERLAND: Objection, form.

23 THE WITNESS: In conjunction with the  
24 designee.

25 ///

1 BY MR. KURSMAN:

2 Q. Who is actually putting the drugs into the  
3 freezer or refrigerator?

4 A. The designee.

5 Q. Okay. And where is your understanding where  
6 you store the midazolam?

7 A. Midazolam, my understanding, is stored in the  
8 freezer.

9 Q. Okay. And what about the potassium chloride?

10 A. The freezer.

11 Q. And the vecuronium bromide?

12 A. Dry storage.

13 Q. Okay. Now, let's go to paragraph 5, same  
14 page, after "Accountability of LIC." Do you see it  
15 says, "The Warden and the designee jointly verify  
16 the inventory of LIC on a semi-annual basis," and  
17 then in parentheses, "January/July," and then, "at  
18 minimum, and subsequent to each execution."

19 A. I do see that.

20 Q. And then it says, "The Warden and the  
21 designee make appropriate entries in the ledger with  
22 their full signatures that verify the correctness of  
23 the LIC count."

24 A. I see that.

25 Q. When was the last time that you did this?

1 A. This month.

2 Q. Okay. How long ago?

3 A. That's not hard. Yesterday.

4 Q. Yesterday. Okay. When did you do it before  
5 yesterday?

6 A. It had to have been January of this year  
7 because the protocol designed that -- I know we've  
8 had faults with COVID, so it may have been somewhere  
9 between January and July.

10 Q. Okay. But it's your understanding that you  
11 have done it --

12 A. Yes.

13 Q. -- at least sometime between January and  
14 July?

15 A. Yes.

16 Q. Okay. And how many drugs are currently in  
17 the fridge right now?

18 A. Zero.

19 Q. And how many are currently in the freezer?

20 A. Zero.

21 Q. Okay. Now, let's go to "Transfer of  
22 Location," paragraph 2. See it says, "If the LIC is  
23 not used and not compromised in any way, the LIC is  
24 returned to the armory, re-entered on the perpetual  
25 inventory ledger, and secured in the refrigerator."

1 Do you see that?

2 A. I do, yes.

3 Q. What does it mean "not compromised in any  
4 way"?

5 MR. SUTHERLAND: Objection, form.

6 THE WITNESS: Not compromised to me  
7 would mean not tampered with.

8 BY MR. KURSMAN:

9 Q. Can it be opened?

10 A. That's tampered with.

11 Q. Why is it secured in the refrigerator?

12 A. Can't just be left laying around. It has to  
13 be put somewhere secured.

14 Q. Can it be reused on the same inmate?

15 A. No.

16 Q. Let's say an inmate got a stay of execution  
17 for 12 hours.

18 A. Okay.

19 Q. Would that LIC be able to be used on the same  
20 inmate if it wasn't tampered with?

21 A. If it haven't expired and is not outside of  
22 the time limit of being outside, I would say  
23 probably yes.

24 Q. Okay. And -- you would say probably yes?

25 A. Yes.



1 Q. Okay. Who would make that determination?

2 A. Probably the executioner.

3 Q. Okay. So it's up to the executioner as to  
4 whether drugs that have been transferred can be  
5 reused again on the same inmate?

6 MR. SUTHERLAND: Objection, form.

7 THE WITNESS: I would say he handled it  
8 outside of my possession, so he would know.

9 BY MR. KURSMAN:

10 Q. And would you defer to his expertise on this  
11 area?

12 A. Yes.

13 Q. Okay. Let's go to page 37. And you see at  
14 the top it's talking about commercially manufactured  
15 drugs?

16 A. Yes.

17 Q. Okay. And then do you see the last sentence  
18 in 1 under "Storage of LIC," it says, "The chemicals  
19 are placed in unmovable heavy gauge steel containers  
20 with security grade locks"?

21 A. Yes.

22 Q. Are the manufactured drugs stored with the  
23 compounded drugs?

24 A. No.

25 Q. Okay.

1 MR. SUTHERLAND: Objection to the form.

2 BY MR. KURSMAN:

3 Q. And why not?

4 MR. SUTHERLAND: Same objection.

5 THE WITNESS: One has a different  
6 requirement than the other.

7 BY MR. KURSMAN:

8 Q. According to what?

9 A. According to the -- probably the prescription  
10 from the pharmacist.

11 Q. Okay. Now, if there's a conflict between a  
12 prescription from the pharmacist and the protocol  
13 itself, which provision would you follow?

14 MR. SUTHERLAND: Objection to form.

15 THE WITNESS: If I had to do that, being  
16 that I don't see the prescription and I'm not the  
17 one putting it away, I would follow what the  
18 protocol says.

19 BY MR. KURSMAN:

20 Q. Okay. And what if somebody who was doing it  
21 chose to follow the prescription rather than the  
22 protocol?

23 MR. SUTHERLAND: Objection, form.

24 THE WITNESS: Never have taken place,  
25 they can't.

1 BY MR. KURSMAN:

2 Q. Would you stop them from doing it?

3 A. Yes.

4 Q. Okay. And why?

5 MR. SUTHERLAND: Objection, form.

6 THE WITNESS: Because I'm the warden and  
7 it's my responsibility to stop them.

8 BY MR. KURSMAN:

9 Q. And what if you didn't stop them from doing  
10 it?

11 MR. SUTHERLAND: Objection, form.

12 BY MR. KURSMAN:

13 Q. Do you think it could interfere with the  
14 lethal injection process?

15 A. Don't know, never had to do it.

16 Q. Okay. Let's go to "Storage of LIC,"  
17 paragraph 3. And do you see it says, at the very  
18 bottom, "As the chemicals reach their expiration  
19 dates, they are disposed of by hazardous waste  
20 pick-up"?

21 Do you see that?

22 A. I do, yes.

23 Q. Okay. Who's responsible for ensuring this?

24 A. Myself in conjunction with the designee.

25 Q. Okay. And is this always done on time?

1 A. It's done as required by protocol.

2 Q. The drugs that you disposed of yesterday,  
3 were many of them expired?

4 A. Yes.

5 Q. And had they been expired for a long time?

6 A. Yes, probably so.

7 Q. Past --

8 A. You'd have to define "long."

9 Q. Past January of this year? Did they expire  
10 in 2020?

11 A. Yes.

12 Q. Okay. And a minute ago you said you did one  
13 of these checks in January or sometime about -- to  
14 look at the beyond use dates of the drugs in the  
15 freezer and refrigerator?

16 A. Yes.

17 Q. Why weren't they disposed of then?

18 A. They just weren't. I mean, I can inventory  
19 and make sure they're there, but that doesn't mean I  
20 have to dispose of them at that time.

21 Q. Well, doesn't the protocol require that you  
22 dispose of the chemicals when they reach their  
23 expiration dates?

24 A. Yes.

25 Q. Okay. But that wasn't done in January?

1 A. Apparently not.

2 Q. Okay. Who decided that it was okay to  
3 deviate from the protocol?

4 MR. SUTHERLAND: Don't identify any  
5 individuals' names.

6 THE WITNESS: I would say the designee.

7 BY MR. KURSMAN:

8 Q. The designee said to you, "It's okay to  
9 deviate from the protocol"?

10 A. Not okay to deviate. If you want to look at  
11 it that way. It's we'll dispose of it at a later  
12 time. We were doing COVID at that time, and we did  
13 not dispose of anything at that time.

14 Q. You didn't dispose of trash at the prison at  
15 that time?

16 A. Yes.

17 Q. You didn't dispose of hazardous waste at the  
18 prison at that time?

19 A. I'm sure we did.

20 Q. Okay. So why didn't you dispose of the  
21 lethal injection chemicals at that time?

22 A. No answer for that.

23 Q. Okay. And the person -- okay.

24 And when the designee said, "Let's not  
25 dispose of these drugs yet," what was your

1 response?

2 MR. SUTHERLAND: Objection to the form.

3 THE WITNESS: We'll dispose of them when  
4 we get to them.

5 BY MR. KURSMAN:

6 Q. Okay. Did you think, "I'm the warden and  
7 it's my job to carry out the protocol, and the  
8 protocol says we have to dispose of them now, so we  
9 have to"?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: What I thought was they're  
12 here in a secure area, and though they're expired,  
13 we will dispose of them the first opportunity we  
14 get, outside of that opportunity.

15 BY MR. KURSMAN:

16 Q. Okay. And the first opportunity was  
17 yesterday?

18 A. Yes.

19 Q. Okay. And who ultimately made the decision  
20 that it was okay to deviate from the protocol's  
21 requirement that you have to dispose of the drugs  
22 when they reach their expiration date?

23 A. I would say it was a joint decision.

24 Q. Between who? Without identifying any names.

25 A. Myself and the designee.

1 Q. Okay. Now, let's go on paragraph 37 -- I  
2 mean, on page 37, I apologize.

3 In the -- in the middle of the main  
4 paragraph it says -- you see where it says  
5 chemicals are picked up from the DSNF or RMSI  
6 warehouse. "A member of the Execution Team checks  
7 the supply of chemicals, the concentration, and  
8 expiration dates"?

9 It begins three -- four lines from the  
10 bottom.

11 A. (Reviewing) "One of the members of the  
12 Execution Team," you reading from there?

13 Q. No, I'm sorry. So at the very end of the  
14 last paragraph --

15 A. Okay.

16 Q. -- it says --

17 MR. SUTHERLAND: You mean the first  
18 paragraph?

19 MR. KURSMAN: Yeah, on the first  
20 practice, I apologize.

21 BY MR. KURSMAN:

22 Q. It says, "A member of the Execution Team  
23 checks the supply of the chemicals, the  
24 concentration, and the expiration dates."

25 You see that?

1 A. I do.

2 Q. Okay. Without identifying who that person  
3 is, who is that member of the execution team?

4 A. I would say myself and the -- my designee.

5 Q. Okay. Do either yourself or your designee  
6 have any medical or pharmacological training?

7 A. No.

8 Q. Okay. And how do you check the concentration  
9 of the chemicals?

10 A. It's saying that -- I would say that would  
11 have to be the executioner.

12 Q. Okay. So --

13 A. I don't do that.

14 THE VIDEOGRAPHER: Counsel, I'm sorry.  
15 You're rustling some paper.

16 MR. KURSMAN: Oh, yeah, I apologize.

17 BY MR. KURSMAN:

18 Q. So the executioner is the person who would  
19 check the concentration?

20 A. I would say yes.

21 Q. Okay. So you or your designee don't check  
22 the concentration; is that right?

23 A. Correct.

24 Q. Okay. Do you know why the protocol requires  
25 that the concentration would be checked?



1 MR. SUTHERLAND: Objection to form.

2 THE WITNESS: No.

3 BY MR. KURSMAN:

4 Q. Do you know why -- do you see at the top it  
5 says, "Commercially Manufactured Drugs"?

6 A. Yes.

7 Q. Do you know why this same requirement isn't  
8 for the compounded drugs?

9 MR. SUTHERLAND: Same objection.

10 THE WITNESS: No.

11 BY MR. KURSMAN:

12 Q. Okay. I have one other question. What was  
13 scheduled first, your deposition today or  
14 yesterday's inventory?

15 A. My deposition.

16 Q. Okay. Let's go to page 38. And do you see  
17 at the bottom it says, "Transfer of Location"?

18 A. Yes.

19 Q. Do you see it says, "The Warden's designee is  
20 responsible for the delivery of the LICs to the  
21 appropriate individuals in the Execution Chamber"?

22 MR. SUTHERLAND: I'm sorry, Alex, where  
23 are you?

24 MR. KURSMAN: Oh, so it's page 38,  
25 "Transfer of Location," paragraph 1. It's the very

1 last sentence in paragraph 1.

2 MR. SUTHERLAND: Thank you.

3 MR. KURSMAN: I should have been more  
4 clear. I'm sorry.

5 MR. SUTHERLAND: That's okay.

6 THE WITNESS: That last sentence?

7 BY MR. KURSMAN:

8 Q. Yeah.

9 A. "The Warden's designee is responsible for the  
10 delivery of the LICs to the appropriate individual  
11 in the Execution Chamber"?

12 Q. Yes. Do you see that?

13 A. Yes.

14 Q. Okay. And do you see that that same  
15 language -- if you go back to 36 for compounded  
16 chemicals, that same language is there also, under  
17 "Transfer of Location," paragraph 1, "The Warden's  
18 designee is responsible for the delivery"?

19 Do you see that?

20 A. Yes.

21 Q. Who is the designee, without identifying any  
22 names?

23 A. It would be my designee.

24 Q. And is that the associate warden?

25 A. Uh-huh.

1 Q. Okay. A minute ago you told me that the  
2 executioner actually takes the drugs from the  
3 refrigerator and the freezer.

4 A. That's because myself, along with the  
5 executioner, do it. I don't -- I don't designate  
6 that to my designee to do. The protocol says the  
7 warden's designee is responsible, but I take that  
8 upon myself to do.

9 Q. Okay. But nobody delivers the -- do you  
10 deliver the lethal injection chemicals to the  
11 appropriate individuals in the chamber?

12 A. No.

13 Q. Okay. Does your designee deliver the LICs to  
14 the appropriate individuals in the execution  
15 chamber?

16 A. No.

17 Q. Okay. Who decided that they could deviate  
18 from the protocol here?

19 MR. SUTHERLAND: Objection, form.

20 THE WITNESS: I decided that, in  
21 conjunction with the executioner.

22 BY MR. KURSMAN:

23 Q. Okay. And how did you determine that you  
24 were able to deviate from the protocol?

25 MR. SUTHERLAND: Objection, form.

1 THE WITNESS: Really, there weren't a  
2 determination. We just did it.

3 BY MR. KURSMAN:

4 Q. Okay. And was there any -- did anybody tell  
5 you you can't do this?

6 A. No.

7 Q. Okay. And how long have you been doing this?

8 A. The first two executions that I performed was  
9 both lethal and we did it with both.

10 Q. Okay. Now, let's go to page 39. And you see  
11 it says at the very top, "Lethal Injection Chemical  
12 Set-Up and Preparation"?

13 A. Yes.

14 Q. And then it says, under 1, "Prior to an  
15 execution, a minimum of two members of the Execution  
16 Team bring the LICs from the armory area directly  
17 into the Lethal Injection Room."

18 Do you see that?

19 A. Yes.

20 Q. That's not what happens, though, is it?

21 A. "Prior to the execution, a minimum of two --  
22 minimum of two members of the Execution Team bring  
23 LICs from the armory area directly to the Lethal" --  
24 that is what happens.

25 Q. Oh. So I'm -- I guess I'm confused. You

1 told me that the executioner brings them from the  
2 armory --

3 A. The executioner is a member of the team as  
4 well as myself a member of the team.

5 Q. So you go with the executioner to the  
6 execution room --

7 A. Yes.

8 Q. -- once he grabs the drugs?

9 A. Yes.

10 Q. Okay. And then do you see, in paragraph 1,  
11 it says, "The amount of chemicals and saline is  
12 sufficient to make two complete sets of nine  
13 syringes each. One set is color coded red and the  
14 back-up set is color coded blue."

15 Do you see that?

16 A. Yes.

17 Q. Who does this procedure?

18 MR. SUTHERLAND: Don't identify anyone  
19 by name.

20 THE WITNESS: The executioner.

21 BY MR. KURSMAN:

22 Q. And where are you at this point?

23 A. Along with him, at the armory where we  
24 receive the drugs.

25 Q. Okay. So just so I'm clear, when he makes

1 the two sets of nine syringes, that's in the armory?

2 A. No, they're made in the drip room, what we  
3 call it. But he's there by himself then, along with  
4 his assistants.

5 Q. Okay.

6 A. I'm not there.

7 Q. Is the drip room the same as --

8 A. Yes.

9 Q. -- the -- just so I'm clear -- the same as  
10 the lethal injection executioner's room?

11 A. Yes.

12 Q. Okay. And where are you at this point?

13 A. I may not even be in that area at that time.

14 Q. Well, where would you be?

15 A. Who knows?

16 Q. Okay.

17 A. Somewhere at the facility.

18 Q. Well, okay, so a minute ago you told me that  
19 you and the executioner take the lethal injection  
20 chemicals and walk them into the execution area.

21 A. Yes.

22 Q. Okay. Then he takes -- the executioner then  
23 takes the drugs and mixes them into the red and blue  
24 sets?

25 A. And I'm not there.

1 Q. You're not in the execution room at this  
2 point?

3 A. No.

4 Q. Okay. So you leave -- you do whatever you  
5 need to do?

6 A. I leave the area.

7 Q. Okay. And you said him and his assistants?

8 A. Yes.

9 Q. And that's him and two assistants?

10 A. I don't think I said a number.

11 Q. Well, I thought you -- okay. Are any of his  
12 assistants members of the IV team?

13 A. No.

14 Q. Okay. Do any of his assistants have any  
15 medical training?

16 A. That I wouldn't know.

17 Q. Okay. And then you see, in paragraph 2 on  
18 the same page, on 39, it says, "The LICs are drawn  
19 into syringes by one member of the Execution Team."

20 And you're saying that is the executioner,  
21 right?

22 A. Yes.

23 Q. And then it says, "Another member of the  
24 Execution Team observes and verifies that the  
25 procedure has been carried out correctly."

1 A. Yes.

2 Q. Okay. Is that other member, is that one of  
3 his assistants?

4 A. Yes.

5 Q. Do you know which assistant that is, without  
6 identifying any names?

7 A. No.

8 Q. Okay. Do you know whether the same size  
9 syringe is used for each drug?

10 A. I wouldn't know.

11 Q. Do you know whether the drug is drawn  
12 directly into the syringe?

13 A. I wouldn't know.

14 Q. Do you know if the drug is mixed first with  
15 either saline or bacteriostatic water before it's  
16 put into a syringe?

17 A. Yes, but I can't say for sure which one it  
18 is.

19 Q. And have you ever seen that done?

20 A. No.

21 Q. Okay. Do you know what color the content is  
22 of the prepared syringes?

23 A. No.

24 Q. Do you know what falling out of solution  
25 means?



1 A. No.

2 Q. Do you know who checks to determine if the  
3 lethal injection chemicals are falling out of  
4 solution?

5 MR. SUTHERLAND: Don't identify anybody  
6 by name.

7 THE WITNESS: No.

8 BY MR. KURSMAN:

9 Q. Okay. What does it mean where it says,  
10 "Another member of the Execution Team observes and  
11 verifies that the procedure has been carried out  
12 correctly"?

13 What does it mean for the procedure to be  
14 carried out correctly?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: Which procedure?

17 BY MR. KURSMAN:

18 Q. The procedure of being -- the LICs being  
19 drawn into syringes.

20 A. It probably would be one of his assistants.

21 Q. But my question is what does it mean for the  
22 procedure to be carried out correctly?

23 MR. SUTHERLAND: Same objection.

24 THE WITNESS: Probably according to what  
25 the protocol says it has to be done.

1 BY MR. KURSMAN:

2 Q. Do you know how the execution team member  
3 verifies that that procedure has been carried out  
4 correctly?

5 A. No.

6 Q. And do you know if that member has a  
7 background in chemistry?

8 A. I wouldn't know.

9 Q. Okay. And what do you do with the empty  
10 vials after preparing the syringes?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: The empty vials, bagged up  
13 in a biohazard bag, it has to accompany the deceased  
14 to the ME's office.

15 BY MR. KURSMAN:

16 Q. Did you decide which member will be  
17 responsible for which role in this procedure here?

18 A. No.

19 Q. Okay. So as the warden, did you decide who  
20 the executioner would be?

21 MR. SUTHERLAND: Objection, form.

22 THE WITNESS: No.

23 BY MR. KURSMAN:

24 Q. Did you decide who the executioner's  
25 assistants would be?

1 A. No.

2 Q. Who decided who the executioner's assistants  
3 would be, without identifying any names?

4 A. The commissioner, as I stated earlier, in  
5 conjunction with myself. But the commissioner make  
6 that decision.

7 Q. But you were with the commissioner at that  
8 time to make the decision?

9 A. Yes, he discussed it with me.

10 Q. Are the executioner's assistants at all of  
11 the trainings?

12 A. Not all.

13 Q. Are they at most?

14 A. Yes.

15 Q. Okay. Are they at all the classes?

16 A. Not all.

17 Q. How did you decide who the executioner's  
18 assistants would be?

19 A. I don't.

20 Q. How did you and the commissioner together  
21 decide who the executioner's assistants would be?

22 A. He presents them to me, we discuss them, and  
23 then he makes the decision whether they're a good  
24 candidate.

25 Q. Okay. And what qualifications do you base

1 that on?

2 A. We utilize some of the qualifications in  
3 here. Basically that's it, the commissioner makes a  
4 decision.

5 Q. So you and the commissioner talked about who  
6 the executioner's assistants would be?

7 A. Yes, he presented them to me and we discussed  
8 them.

9 Q. And you -- and you knew they would have a  
10 role of mixing the drugs, or at least watching the  
11 executioner mix the drugs --

12 A. Yes.

13 Q. -- and watching the executioner push the  
14 drugs?

15 A. Yes.

16 Q. And you weren't curious as to whether they  
17 had medical experience?

18 A. No.

19 MR. SUTHERLAND: Objection, form.

20 BY MR. KURSMAN:

21 Q. Okay. And you weren't curious as to whether  
22 they had a background in chemistry?

23 MR. SUTHERLAND: Objection, form.

24 THE WITNESS: No.

25 ///

1 BY MR. KURSMAN:

2 Q. And you weren't curious as to whether they  
3 had a background in pushing drugs through IV lines?

4 MR. SUTHERLAND: Same objection.

5 THE WITNESS: No.

6 BY MR. KURSMAN:

7 Q. Okay. And you didn't find that out while  
8 discussing the qualifications of these people with  
9 the commissioner?

10 A. No.

11 Q. Okay. And how does the warden have knowledge  
12 or experience to determine who should be responsible  
13 for this role?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: The role of a executioner?

16 BY MR. KURSMAN:

17 Q. Yes.

18 A. I don't.

19 Q. Okay. Let's go to page -- stay on page 39.

20 Do you see at the bottom it says,  
21 "Preparation in accordance with the directions of  
22 the Pharmacy with which the Department has Pharmacy  
23 Service Agreements," and then it -- you see it  
24 discusses midazolam, saline, vecuronium bromide,  
25 saline again, potassium chloride, and saline?

1 A. Yes.

2 Q. Is the executioner responsible for carrying  
3 out all of these steps as described in paragraph 4  
4 on page 39?

5 A. Yes.

6 Q. Is the executioner responsible for  
7 reconstituting the vecuronium bromide? And that  
8 would be in paragraph 4, Subsection c.

9 A. Uh-huh. Yes.

10 Q. Did you ask the executioner how he knows how  
11 to reconstitute the vecuronium bromide?

12 MR. SUTHERLAND: Objection to the form.

13 THE WITNESS: No.

14 BY MR. KURSMAN:

15 Q. Do you know how he knows to reconstitute the  
16 vecuronium bromide?

17 A. Not without guessing or speculating.

18 Q. Okay. Do you have any written instructions  
19 on how to reconstitute the vecuronium bromide?

20 A. Do I?

21 Q. Does TDOC, that you're aware of?

22 A. I'm sure they would have a prescription on  
23 how to mix it.

24 Q. Okay. And if they don't have instructions,  
25 how could another member of the execution team

1     verify that this is being done correctly?

2                   MR. SUTHERLAND:  Objection to the form.

3                   THE WITNESS:  They would have to know.

4     BY MR. KURSMAN:

5     Q.         They would have to know what?

6     A.         How to properly mix it.

7     Q.         The other member of the execution team,  
8     you're saying?

9     A.         The assistants, yeah.

10    Q.         The assistants --

11    A.         Yes.

12    Q.         -- would have to know how to properly mix it?

13    A.         Yes.

14    Q.         And how would they know how to properly mix  
15    it if there were no written instructions?

16                   MR. SUTHERLAND:  Objection to the form.

17                   THE WITNESS:  Without written  
18    instructions, they wouldn't.

19    BY MR. KURSMAN:

20    Q.         Okay.  And you said you've never spoken with  
21    the executioner regarding the preparation of  
22    vecuronium bromide, right?

23    A.         No.

24    Q.         And you've never spoken with the pharmacist,  
25    right?

1 A. No.

2 Q. Okay. And do you know what the protocol is  
3 for determining whether any of the LIC has fallen  
4 out of solution?

5 MR. SUTHERLAND: Can you rephrase that?

6 MR. KURSMAN: Sure.

7 MR. SUTHERLAND: Using the term  
8 "protocol" is kind of --

9 MR. KURSMAN: Right, yeah, I -- yeah,  
10 sorry about that.

11 BY MR. KURSMAN:

12 Q. Do you know what the policy would be or  
13 instructions would be or steps that would be taken  
14 to determine whether any of the LIC has fallen out  
15 of solution?

16 A. I don't understand that terminology.

17 Q. Do you mean -- what terminology are you  
18 talking about, falling out of solution?

19 A. Falling out of solution.

20 Q. Okay. And who sends the syringes and  
21 prepared but unused lethal injection chemicals to  
22 the medical examiner's office after the execution is  
23 complete?

24 A. Who sends the syringes and -- repeat, please.

25 Q. Sure. Who sends the syringes and the



1 prepared but unused lethal injection chemicals --

2 MR. SUTHERLAND: Don't state a person's  
3 name?

4 BY MR. KURSMAN:

5 Q. -- to the medical examiner's office after the  
6 execution is complete?

7 A. The executioner.

8 Q. Let's go to page 42.

9 And do you see at the top it says,  
10 "Insertion of a Catheter and Connection of IV  
11 Lines"?

12 A. Yes.

13 Q. And then it says, No. 7, "In the unlikely  
14 event that none of these veins are usable, the  
15 physician is called into the Execution Chamber to  
16 perform a cut-down procedure"?

17 A. Yes, I see it.

18 Q. And I think we talked about this before, but  
19 who decides to call the physician into the execution  
20 chamber?

21 MR. SUTHERLAND: Don't identify a  
22 specific individual.

23 THE WITNESS: It would have to be the IV  
24 team/EMTs.

25 ///

1 BY MR. KURSMAN:

2 Q. Do you make the ultimate call on that?

3 A. If they shared it with me and they request a  
4 doctor, then, yes, we would do that.

5 Q. Do they have to share it with you?

6 A. Yes.

7 Q. Okay. So if they can't find a vein, they  
8 have to tell you before going to the physician?

9 A. Yes, I would say we share it in conjunction  
10 together.

11 Q. Okay. And then who makes the ultimate  
12 determination whether to call the doctor? Is that  
13 you?

14 A. Yes.

15 Q. Okay. Now let's go to page 44 of Exhibit 1.  
16 And it's titled, "Chemical Administration and IV  
17 Monitoring."

18 And you see in Section 1 it says, "All  
19 members of the IV Team monitor both catheters to  
20 ensure there's no swelling around the catheter that  
21 could indicate the catheter is not sufficiently  
22 inside the vein."

23 Do you see that?

24 A. I do.

25 Q. Okay. At this point, though, they're not in

1 the execution chamber anymore, right?

2 A. "They" being the --

3 Q. The IV team.

4 MR. SUTHERLAND: Objection to the form.

5 THE WITNESS: (Reviewing) Correct.

6 BY MR. KURSMAN:

7 Q. Okay. So who is monitoring both catheters to  
8 ensure there's no swelling around the catheter?

9 A. Will be one of the assistants in the IV room.

10 Q. Okay. So it would be one of the  
11 executioner's assistants?

12 A. Yes.

13 Q. Okay. And how can they see the possible  
14 swelling around the catheters?

15 A. By viewing it on closed circuit monitor.

16 Q. Okay. And do you know what their expertise  
17 is with the swelling around catheters?

18 A. That I don't.

19 Q. Okay. And then if you go to 6 on this same  
20 page, page 44, it says, "When the Warden gives the  
21 signal to proceed with the execution, the  
22 Executioner clamps the line near the spike."

23 Do you see that?

24 A. I do.

25 Q. Are you monitoring the IV sites at this

1 point?

2 A. No.

3 Q. Okay. And then if you go to -- on page 45,  
4 paragraph 7, it says, on the second sentence,  
5 "Should there be or appear to be swelling around the  
6 catheter or if there is resistance to the pressure  
7 being applied to the plunger, the Executioner pulls  
8 the plunger back."

9 Do you see that?

10 A. Yes.

11 Q. At this point who is looking for that  
12 swelling?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: It would be the  
15 individuals in the IV room.

16 BY MR. KURSMAN:

17 Q. And you're talking about the executioner's  
18 assistants?

19 A. Uh-huh.

20 Q. And are they aware that they're looking for  
21 the swelling?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: I will say that they are.

24 BY MR. KURSMAN:

25 Q. Okay. And they're not watching the

1 executioner at this point?

2 MR. SUTHERLAND: Objection to the form.

3 THE WITNESS: I wouldn't have an  
4 understanding of what they would be watching in the  
5 room. I know they monitor.

6 BY MR. KURSMAN:

7 Q. Okay. Well, it was my understanding when we  
8 were discussing this earlier that the executioner's  
9 assistants are watching the push rate of the  
10 executioner.

11 A. More than one watch more than one thing.

12 Q. So they're watching both the push rate of the  
13 executioner and swelling for -- at the execution  
14 site -- at the injection site?

15 A. Don't like to --

16 MR. SUTHERLAND: Objection to the form.

17 THE WITNESS: Don't like to assume, but  
18 I will take it that one is monitoring the execution  
19 and one is monitoring the veins.

20 BY MR. KURSMAN:

21 Q. Okay. And you don't know whether either of  
22 these individuals have any medical experience,  
23 right?

24 A. Do not.

25 Q. Okay. Now let's go to page 51. It's titled

1 "Execution Team" at the top.

2 If we go to paragraph 4, it says, "The  
3 following procedures shall apply: The Execution  
4 Team's Officer in Charge and/or the Assistant  
5 Officer in Charge conducts a training session at  
6 least once each month at which time all equipment  
7 will be tested. The training includes a simulated  
8 execution."

9 Who -- without identifying any names, who is  
10 the execution team's officer in charge?

11 A. That would be me.

12 Q. And same as before, without identifying any  
13 names, who is the assistant officer in charge?

14 A. My associate security.

15 Q. Okay. And do these trainings happen at least  
16 once a month?

17 A. Yes.

18 Q. And do you schedule the training?

19 A. Yes.

20 Q. And when was your most recent training?

21 A. Week before last.

22 Q. And when's the next training?

23 A. I haven't scheduled.

24 Q. Okay. And what does the term "simulated  
25 execution" mean?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: Not an actual execution,  
3 you're just simulating it, acting it out.

4 BY MR. KURSMAN:

5 Q. Who inserts the IV lines at this point?

6 A. The IV team, the EMTs.

7 Q. And how do you test the IV drip?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: I don't.

10 BY MR. KURSMAN:

11 Q. How do the executioners test the IV drip?

12 A. I wouldn't know.

13 Q. And how do they practice for monitoring  
14 swelling at the injection site?

15 MR. SUTHERLAND: Same objection.

16 THE WITNESS: Same way if it was an  
17 actual execution.

18 BY MR. KURSMAN:

19 Q. Which is what?

20 A. Monitor -- on the monitor in the -- in the  
21 room.

22 Q. But how do they know what to look for is my  
23 question.

24 MR. SUTHERLAND: Same objection.

25 THE WITNESS: I wouldn't know that.

1 BY MR. KURSMAN:

2 Q. Then it says, "A week before the scheduled  
3 execution, the Officer in Charge and Assistant  
4 assembles the Execution Team in the execution area  
5 to prepare and test all appliances and equipment for  
6 the scheduled execution."

7 And that's 4B. How long does this take?

8 A. No specific time.

9 Q. And what appliances and equipment are tested?

10 A. Everything that is utilized to carry out an  
11 execution properly, the gurney, the audio systems,  
12 the video systems, equipment in the room and  
13 everything, the telephones and all.

14 Q. Do you have any equipment to help determine  
15 consciousness of the inmate?

16 A. No.

17 Q. Do you know why you don't have that  
18 equipment?

19 MR. SUTHERLAND: Objection to the form.

20 THE WITNESS: No.

21 BY MR. KURSMAN:

22 Q. Do you know that in hospitals they have that  
23 equipment?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: No.



1 BY MR. KURSMAN:

2 Q. Do you think that equipment would be helpful  
3 for you --

4 MR. SUTHERLAND: Objection to the form.

5 BY MR. KURSMAN:

6 Q. -- in determining an inmate's consciousness?

7 A. I wouldn't know.

8 Q. Okay. Now, who is responsible for ensuring  
9 that all equipment is properly placed? And that's  
10 page 51, C2.

11 MR. SUTHERLAND: Don't state an  
12 individual's name.

13 THE WITNESS: Every individual that had  
14 been designated to do certain assignments, it's  
15 their responsibility to make sure that it's all in  
16 place when it's time to go.

17 BY MR. KURSMAN:

18 Q. And without identifying those individuals,  
19 who would they be?

20 A. Every station, from the escort person to the  
21 IV team to the audio team, from the -- everyone that  
22 have a part in it and anything to do with it,  
23 everyone ensure that their area is ready to roll  
24 when it's time to roll.

25 Q. And then you see in paragraph 6 it says,

1 "After the physician pronounces death -- the inmate  
2 deceased, the designee -- pronounces the inmate  
3 deceased" -- I apologize -- "the designee informs  
4 the Commissioner that the sentence has been carried  
5 out."

6 Who is the designee, without naming that  
7 person's name, that informs the commissioner that  
8 the sentence has been carried out?

9 A. That would be me.

10 Q. And who removes the body and places it into a  
11 body bag?

12 MR. SUTHERLAND: Don't state any  
13 person's name.

14 THE WITNESS: The medical examiner's  
15 office.

16 BY MR. KURSMAN:

17 Q. Okay. And without identifying anybody, who  
18 places the lethal injection chemicals and syringes  
19 into the body bag?

20 MR. SUTHERLAND: Objection to the form.

21 THE WITNESS: The medical examiner.

22 BY MR. KURSMAN:

23 Q. And who closes the bag?

24 A. The medical examiner.

25 Q. Okay. At what point do you leave the

1 execution chamber?

2 A. Once everything is what I call squared away,  
3 everything's back in order and -- I'm usually the  
4 last one to leave.

5 MR. KURSMAN: Could we take a 10-minute  
6 break at this point?

7 MR. SUTHERLAND: Absolutely.

8 MR. KURSMAN: Okay.

9 THE VIDEOGRAPHER: One moment, please.  
10 Going off the record at 2:28 p.m.

11 (Recess observed from 2:30 p.m. to  
12 2:48 p.m.)

13 THE VIDEOGRAPHER: Back on the record at  
14 2:45 p.m.

15 MR. KURSMAN: Warden, we just went on  
16 break. During that break was there anything you  
17 thought of that would change your response to any of  
18 my questions earlier?

19 THE WITNESS: No, sir.

20 BY MR. KURSMAN:

21 Q. Okay. Let's go to page 64, which has "Day  
22 3 - Evening Schedule." That would be 64 of  
23 Exhibit 1. Just let me know when you get there.

24 A. Okay.

25 Q. Okay. And then if you go to page 66, which

1 is still on that evening schedule, at the top it  
2 says 7:10 p.m.

3 A. Okay.

4 Q. Do you see No. 4, it says, "The Warden gives  
5 the signal to proceed and the Executioner begins to  
6 administer the first chemical"?

7 Yes.

8 A. Is there any checklist you go through  
9 before --

10 MR. SUTHERLAND: Sorry, Alex, where are  
11 you?

12 MR. KURSMAN: So do you see on page 66,  
13 7:10 p.m.?

14 MR. SUTHERLAND: Yes.

15 MR. KURSMAN: Okay. And then No. 4.

16 MR. SUTHERLAND: Gotcha.

17 BY MR. KURSMAN:

18 Q. Is there any checklist you go through before  
19 giving the signal to proceed?

20 A. I just follow the protocol to the letter.  
21 When it gets to that point, then I proceed.

22 Q. I mean, are you looking for proper vein  
23 access at that time?

24 A. No. That will be after I have checked for  
25 consciousness.

1 I'm sorry. Let me back up.

2 Q. Sure.

3 A. That's after everything had gotten to the  
4 point and he has given his last words.

5 Q. Right. So my question is before you give the  
6 signal to proceed, is there any checklist you go  
7 through, meaning do you look at his veins? Do you  
8 look --

9 A. No. At that time there wouldn't be a need.  
10 I don't look at his veins anyway, but at that time  
11 there wouldn't be a need to look at his veins.

12 Q. Okay. So is the only thing you're waiting  
13 for are his last words to end?

14 A. Yes.

15 Q. And then Section 5 says, "After  
16 500 milligrams of midazolam and a saline flush has  
17 been dispensed, the Executioner shall signal to the  
18 Warden and await further direction."

19 A. Yes.

20 Q. What's the purpose of this pause?

21 MR. SUTHERLAND: Objection to the form.

22 THE WITNESS: After 500 milligrams  
23 midazolam will be given, you're asking about the  
24 pause?

25 ///

1 BY MR. KURSMAN:

2 Q. Yeah.

3 A. Speculation, other than waiting on it to work  
4 into the system is the only thing I can think of.

5 Q. Okay. And what happens if you see any signs  
6 of distress from the inmate? What would you do at  
7 that point?

8 MR. SUTHERLAND: Objection to the form.

9 THE WITNESS: I've never seen any signs  
10 of distress as of yet. Once the midazolam is  
11 inserted and the waiting period, that I couldn't  
12 answer. I've never had to be confronted with that.

13 BY MR. KURSMAN:

14 Q. Have you trained for that?

15 A. No.

16 Q. Okay. So if you go to Section 6, it says,  
17 "The Warden shall wait two minutes following the  
18 administration of midazolam and the saline flush  
19 before assessing the consciousness of the inmate."

20 Do you know why you wait two minutes?

21 MR. SUTHERLAND: Objection to the form.

22 THE WITNESS: As just stated, other than  
23 wait until it gets into his system.

24 BY MR. KURSMAN:

25 Q. But do you know who decided on two minutes

1       rather than one or rather than ten?

2                   MR. SUTHERLAND:   Same objection.

3                   THE WITNESS:    I don't.

4       BY MR. KURSMAN:

5       Q.       And then if you go to Section 7, do you see  
6       Section 7 says, "At this time, the Warden shall  
7       assess the consciousness of the condemned inmate" --

8       A.       Yes.

9       Q.       -- "by brushing the back of his hand" -- and  
10      you see that what paragraph says?

11      A.       Yes.

12      Q.       What does it mean to you to be unconscious?

13                   MR. SUTHERLAND:   Objection to the form.

14                   THE WITNESS:    Unaware.

15      BY MR. KURSMAN:

16      Q.       Is there a way for an individual to be  
17      unconscious and then regain consciousness in your  
18      opinion?

19                   MR. SUTHERLAND:   Objection to the form.

20                   THE WITNESS:    That would be yes.

21      BY MR. KURSMAN:

22      Q.       Okay.   Are you aware of medical procedures  
23      where a person is sedated but not under a deep level  
24      of anesthesia?

25                   MR. SUTHERLAND:   Objection to the form.

1 THE WITNESS: Professionally, not -- not  
2 really.

3 BY MR. KURSMAN:

4 Q. Okay. So an example would be, like, a  
5 colonoscopy, let's say. Are you aware of what a  
6 colonoscopy is?

7 A. Yes.

8 Q. Are you aware that sometimes midazolam is  
9 given as the drug to sedate patients during a  
10 colonoscopy?

11 A. No.

12 Q. Okay. Are you aware that during a  
13 colonoscopy patients aren't under a deep level of  
14 anesthesia?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: Repeat, please.

17 BY MR. KURSMAN:

18 Q. Sure. Are you aware that during a  
19 colonoscopy patients aren't under a deep level of  
20 anesthesia?

21 A. No.

22 MR. SUTHERLAND: Same objection.

23 BY MR. KURSMAN:

24 Q. Meaning that some stimuli, like violent  
25 stimuli, could arouse them and wake them up,



1     although they seem to be sleeping?

2                   MR. SUTHERLAND:  Objection to the form.

3                   THE WITNESS:  No, not aware.  I've had a  
4     colonoscopy and I slept like a baby.  I wasn't aware  
5     of my surrounding.

6     BY MR. KURSMAN:

7     Q.         Right.  Are you aware -- are you aware that a  
8     colonoscopy procedure is much less intrusive than  
9     receiving the doses of vecuronium bromide and  
10    potassium chloride, as called for as -- from the  
11    protocol?

12                  MR. SUTHERLAND:  Objection to the form.

13                  THE WITNESS:  I've never received  
14    vecuronium bromide or midazolam.

15    BY MR. KURSMAN:

16    Q.         Sure.  But are you aware of the pain that  
17    those two drugs would cause if a person wasn't  
18    insensate to pain before receiving those two drugs?

19                  MR. SUTHERLAND:  Objection to the form.

20                  THE WITNESS:  Not knowing that there is  
21    pain to be received, I don't know that.

22    BY MR. KURSMAN:

23    Q.         Okay.  So you're not aware that the second  
24    and third drugs could cause an inmate pain?

25    A.         Not aware.

1 Q. Okay. You said that you had received a  
2 colonoscopy and slept like a baby.

3 Do you think if you received that same  
4 anesthetic drug for a heart surgery you would have  
5 slept like a baby?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: Which drug are you  
8 referring to?

9 BY MR. KURSMAN:

10 Q. Whatever drug you received during your  
11 colonoscopy.

12 A. I don't know. I've never been involved in  
13 that.

14 Q. Okay. And is that because you're not a  
15 medical professional?

16 MR. SUTHERLAND: Objection to the form.

17 THE WITNESS: Medical profession or ever  
18 had to do it.

19 BY MR. KURSMAN:

20 Q. Okay. Do you know how you can tell whether  
21 somebody is insensate verse unresponsive?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: No.

24 BY MR. KURSMAN:

25 Q. Okay. And are you aware that --

1 MR. GUNN: Sorry.

2 THE VIDEOGRAPHER: I'm so sorry. Your  
3 mic is rubbing against your shirt and I'm getting  
4 some interference. Can I just adjust that for you  
5 real quick?

6 MR. KURSMAN: Sure.

7 (Off the record.)

8 THE VIDEOGRAPHER: Continue.

9 BY MR. KURSMAN:

10 Q. And are you able to tell whether somebody is  
11 unresponsive but still sensate to pain?

12 MR. SUTHERLAND: Same objection,  
13 objection to form.

14 THE WITNESS: No.

15 BY MR. KURSMAN:

16 Q. Do you think if somebody is sleeping that  
17 they are unconscious?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: Sleeping but unconscious?  
20 Yes.

21 BY MR. KURSMAN:

22 Q. Okay. And can you describe in your own words  
23 what a person who is unconscious, as defined in the  
24 protocol, what this person would look like?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: Sleeping but unconscious  
2 and what that person would look like. It's someone  
3 that would be unconscious, of course, because their  
4 eyes would be closed. Some will have no reaction to  
5 anything. Some can maybe resist noise of their  
6 surroundings.

7 BY MR. KURSMAN:

8 Q. Okay. And in your opinion what would it take  
9 for that person to regain consciousness as defined  
10 in the protocol?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: I have no opinion.

13 BY MR. KURSMAN:

14 Q. Okay. But what would signal to you that the  
15 person has regained consciousness?

16 MR. SUTHERLAND: Same objection.

17 THE WITNESS: Reacting to certain --  
18 certain things.

19 BY MR. KURSMAN:

20 Q. Okay. If there is a person who drinks too  
21 much alcohol and is passed out, would you consider  
22 that person unconscious?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: I wouldn't know.

25 ///

1 BY MR. KURSMAN:

2 Q. Okay. But if you -- if you called their name  
3 and they didn't respond, wouldn't you consider that  
4 person unconscious?

5 MR. SUTHERLAND: Objection to the form.

6 THE WITNESS: Wouldn't know. I've never  
7 had to do it, but I would say if someone had passed  
8 out to the point from drinking alcohol and you  
9 yelled their name and did other things, such as  
10 pinching certain areas, and if you don't get a  
11 reaction, then I will say that they're unconscious.

12 BY MR. KURSMAN:

13 Q. Okay. Is movement of an inmate's fingers  
14 indicative of consciousness?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: No.

17 BY MR. KURSMAN:

18 Q. Okay. So if an inmate moves their fingers,  
19 you don't think that that would mean that they are  
20 conscious?

21 MR. SUTHERLAND: Same objection.

22 THE WITNESS: No, not necessarily.

23 BY MR. KURSMAN:

24 Q. Okay. Did you discuss that with the  
25 physician at all?

1 A. I did.

2 Q. Whether an inmate moves their fingers?

3 A. Yes.

4 Q. Okay. And what did the physician tell you?

5 A. You can actually be deceased and have finger  
6 movement with nerves. It doesn't mean that you're  
7 conscious. That can just be your nerves reacting.

8 Q. Okay. What about if they -- if their eyes  
9 blinked? Would that signal to you that they were  
10 conscious?

11 MR. SUTHERLAND: I'm sorry. Can you --  
12 you were talking about the physician, and can you  
13 just rephrase the question? Are you --

14 MR. KURSMAN: Oh, I'm done with that,  
15 the physician question.

16 MR. SUTHERLAND: You're now back to just  
17 asking him his --

18 MR. KURSMAN: Yeah.

19 MR. SUTHERLAND: Okay. Can you just  
20 rephrase the question?

21 MR. KURSMAN: Sure.

22 BY MR. KURSMAN:

23 Q. So what if an inmate's eyes blink, would that  
24 signal to you that the inmate was conscious?

25 MR. SUTHERLAND: Objection to the form.

1 THE WITNESS: It could.

2 BY MR. KURSMAN:

3 Q. But would it be a definitive signal of  
4 consciousness?

5 MR. SUTHERLAND: Same objection.

6 THE WITNESS: Not necessarily.

7 BY MR. KURSMAN:

8 Q. What if an inmate opened their mouth --

9 MR. SUTHERLAND: Same objection.

10 BY MR. KURSMAN:

11 Q. -- after you called their name but didn't say  
12 anything? Would that signal to you that they were  
13 still conscious?

14 A. Not necessarily.

15 Q. Okay. So what would indicate to you, after  
16 you performed the consciousness test, that an inmate  
17 was still conscious?

18 A. By them reacting to the things that I have  
19 done and to watch for some form of reaction when I  
20 do the things that I do. That may be an indication.

21 Q. Okay. So let's say their response is  
22 nonresponsive to what you do. So you call their  
23 name, you rub their eye, you pinch their shoulder,  
24 and instead of reacting to any of that, they turn  
25 their head to the side. Would you think the inmate

1 was conscious at that point?

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: Not necessarily.

4 BY MR. KURSMAN:

5 Q. Okay. What if they made sounds out of their  
6 mouth? Would you think the inmate was conscious?

7 MR. SUTHERLAND: Same objection.

8 THE WITNESS: Not necessarily.

9 BY MR. KURSMAN:

10 Q. What if they kicked their legs, or at least  
11 attempted to kick their legs, because they're  
12 strapped in?

13 MR. SUTHERLAND: Same objection.

14 THE WITNESS: Not necessarily. Could be  
15 a nervous reaction.

16 BY MR. KURSMAN:

17 Q. What if they said a word out loud --

18 MR. SUTHERLAND: Same objection.

19 BY MR. KURSMAN:

20 Q. -- unresponsive to your calling their name or  
21 grabbing -- or grabbing them?

22 A. Said a word?

23 Q. Just any word. Dog.

24 A. Then I would say that they were probably  
25 unconscious.



1 Q. Unconscious. Okay.

2 A. I mean conscious.

3 Q. Oh, conscious.

4 A. Conscious.

5 Q. Okay. Okay. And what if they squeezed their  
6 fists, if they could?

7 A. Could be nerves. That doesn't mean they're  
8 conscious.

9 Q. Okay. So at that point would you tell the  
10 executioner to proceed?

11 MR. SUTHERLAND: I'm sorry. At what  
12 point, Alex?

13 MR. KURSMAN: At these points of  
14 determining consciousness.

15 MR. SUTHERLAND: All these?

16 MR. KURSMAN: Yeah, each one, aside from  
17 the dog example that we said.

18 MR. SUTHERLAND: I'll object to the  
19 form.

20 THE WITNESS: If they reacted, once I  
21 performed the things that I did at the time I did  
22 them, I would probably just say yes, that they're  
23 conscious. But after I did them and didn't observe  
24 any signs, then I would probably say that they're  
25 unconscious.

1 BY MR. KURSMAN:

2 Q. Okay. But my question is after you do your  
3 three things --

4 A. Uh-huh.

5 Q. -- if the inmate then blinks their eyes but  
6 nothing else, would you tell the executioner he can  
7 proceed?

8 A. I never have experienced that. It would just  
9 depend on what I see.

10 Q. Okay. What if the inmate -- after you do  
11 your three tests, if the inmate moves his fingers?  
12 Would you tell the executioner he can proceed?

13 A. Probably.

14 Q. Okay. And what about if the inmate's legs  
15 start moving after you do your three things? Would  
16 you tell the executioner he can proceed?

17 A. I guess I would have to ask the question -- I  
18 know I'm not the one asking the questions. How much  
19 time in between the conclusion of the consciousness  
20 check and this person doing whatever reaction you're  
21 describing?

22 Q. Sure. Maybe a minute. I'm saying if it's  
23 not in response to the consciousness check.

24 A. If it's a minute --

25 Q. Yep.

1 A. -- after I have concluded consciousness  
2 check?

3 Q. Yeah.

4 A. I would say it's too late anyway.

5 Q. Okay. What if it's just some point between  
6 the consciousness check and your scheduled timing to  
7 tell the executioner to proceed? So it's 15 seconds  
8 after, if the inmate starts tapping his fingers or  
9 moving his fingers?

10 A. Step back. Signal is given then. I don't  
11 know when the executioner begin to push. It'd just  
12 depend on how much I saw. Movement of fingers could  
13 be nerves as well.

14 Q. Okay. And what criteria do you rely on to  
15 determine whether the inmate is conscious or not?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: The criteria that the  
18 protocol spells out that I have to carry out  
19 describing conscious check.

20 BY MR. KURSMAN:

21 Q. Right. But what I mean is -- and sorry, I'm  
22 asking the question inartfully. If you do the  
23 consciousness check and the inmate doesn't respond  
24 at all, let's say, aside from leg movements, how do  
25 you know whether to declare the inmate conscious or

1 unconscious?

2 MR. SUTHERLAND: Objection to the form.

3 THE WITNESS: If he responds to what I  
4 do, I will take him as being conscious.

5 BY MR. KURSMAN:

6 Q. Uh-huh.

7 A. If he don't respond at the time that I do the  
8 things that I do, I will determine him to be  
9 unconsciousness.

10 Q. Okay. Just so I'm clear, I just want to --  
11 so if he doesn't respond to the consciousness check  
12 but then later makes some sort of movement, you  
13 would declare him unconscious because he didn't  
14 respond to the consciousness check?

15 MR. SUTHERLAND: I'm going to object to  
16 the form.

17 THE WITNESS: Yes.

18 BY MR. KURSMAN:

19 Q. Okay. And then do you see in paragraph 7 it  
20 also says, "Observation shall be documented"? We're  
21 still on 7:10, page 66 of Exhibit 1.

22 A. Midway the paragraph?

23 Q. Yep.

24 A. Yes.

25 Q. Who documents your observation?

1 MR. SUTHERLAND: Don't name any names.

2 THE WITNESS: Recorders.

3 BY MR. KURSMAN:

4 Q. Recorders?

5 A. Uh-huh.

6 Q. Are they the same individuals as the  
7 executioner's assistants?

8 A. No. It's multiple ones.

9 Q. Where are the recorders during a time that  
10 you're performing the consciousness check?

11 A. I stated earlier, of course, they're in their  
12 room with the executioner and I stated earlier when  
13 we were going through the diagram that, back in the  
14 video/audio room, recorders is in there as well  
15 watching on monitors.

16 Q. Okay. And I apologize, I --

17 A. That's fine.

18 Q. And do you know who wrote this language in  
19 the protocol?

20 MR. SUTHERLAND: Don't name any names.

21 BY MR. KURSMAN:

22 Q. Without naming any names, this entire  
23 procedure at 7:10 p.m.?

24 A. No.

25 Q. Okay. And do you know why it's not the

1 physician who checks the inmate for consciousness?

2 MR. SUTHERLAND: Objection to the form.

3 THE WITNESS: I do not know.

4 BY MR. KURSMAN:

5 Q. Okay. Could you give the physician that  
6 role?

7 MR. SUTHERLAND: Objection to the form.

8 BY MR. KURSMAN:

9 Q. Do you have that power to do that?

10 MR. SUTHERLAND: Same objection.

11 THE WITNESS: No.

12 BY MR. KURSMAN:

13 Q. Who does?

14 A. That I don't know.

15 Q. And if there's a problem with the execution,  
16 who directs that the execution stop?

17 MR. SUTHERLAND: Objection to the form.

18 THE WITNESS: As we discussed earlier as  
19 well, it depend on what point you're speaking about  
20 stop.

21 BY MR. KURSMAN:

22 Q. So let's say the midazolam was injected, the  
23 inmate is declared unconscious, and as the  
24 executioner begins pushing the second drugs, the  
25 inmate's eyes open.

1 A. (Pause) I would say -- once he begins to  
2 push the second drug, you said, and his eyes open?

3 Q. Uh-huh.

4 A. Probably wouldn't stop.

5 Q. The execution would just proceed?

6 A. It probably could be -- that doesn't mean  
7 that he's conscious because his eyes come open.

8 Q. Okay. And what if the midazolam has been  
9 injected, the vecuronium bromide begins to be  
10 injected, and the inmate yells, "Help"?

11 MR. SUTHERLAND: What's the question?  
12 I'm sorry.

13 BY MR. KURSMAN:

14 Q. The question is who stops the execution at  
15 that point? If anybody does stop the execution.

16 MR. SUTHERLAND: Object to the form of  
17 the question.

18 THE WITNESS: If an inmate hollers  
19 "Help" once midazolam was inserted and they begin to  
20 push the vecuronium bromide and he yells "Help,"  
21 then I would think that he is conscious.

22 BY MR. KURSMAN:

23 Q. And who -- my question is who directs that  
24 the execution would stop at that point, if anybody?  
25 Because maybe nobody does, so the first question I

1 think should be would the execution be called off at  
2 that point?

3 A. Well, it wouldn't be called off. We may --  
4 that I wouldn't know. We've never had to do that.  
5 I understand what you're getting, but that person  
6 probably would be me.

7 Q. Okay. But you don't know if it would be you?

8 A. I don't know.

9 Q. Okay. Then if we go to Section 16, it says,  
10 "The lethal injection recorder completes the Lethal  
11 Injection Execution Recorder Checklist."

12 And just for the record, that's on page 67  
13 of Exhibit 1. Do you see that?

14 A. I do.

15 Q. Do you ever read that checklist?

16 A. I do.

17 Q. When is the last time you reviewed a lethal  
18 injection recorder checklist?

19 A. The last time we rehearsed.

20 Q. Okay. And why do you do that?

21 A. To make sure that everything is in order and  
22 all lines is filled completely the way that it's  
23 supposed to be, nothing's been ignored.

24 Q. And when you're looking at that checklist, do  
25 you look to see what time the drugs are mixed?



1 A. It's a checklist with times and everything,  
2 so if I look at times, yes, of course, I see on  
3 there what time they're mixed.

4 Q. Do you know why some drugs are mixed later  
5 than other drugs?

6 MR. SUTHERLAND: Are you talking about  
7 rehearsal or --

8 MR. KURSMAN: I'm talking about actual  
9 executions.

10 MR. SUTHERLAND: Okay.

11 THE WITNESS: Actual execution, first  
12 set, second set?

13 BY MR. KURSMAN:

14 Q. No. And we'll get to it, but what I'm  
15 talking about is why is midazolam mixed much later  
16 than the other two drugs? Do you know why that  
17 happens?

18 A. No.

19 Q. Okay. Let's go to page 69 on Exhibit 1. And  
20 you see it says, "Contingency Issues"?

21 A. Yes.

22 Q. And then it lists a few of the contingency  
23 issues, the three. Do you see that?

24 A. Yes.

25 Q. Are the contingency issues listed on this

1 page the only issues that you have trained for?

2 A. (Reviewing) Other than what should happen if  
3 I receive a phone call before we begin the  
4 procedure, there's a contingency.

5 Q. Okay. And that phone call would be what?

6 A. That phone call would be from the  
7 commissioner telling me to halt/cease or whatever.

8 Q. Okay. And I'm sorry. I should have asked  
9 this first: Have you trained for these three  
10 contingency issues?

11 A. Yes.

12 Q. Okay. And the only other contingency issue  
13 you've trained for is if you get the phone call from  
14 the commissioner, I think you said, right?

15 A. Yes.

16 Q. Okay. So do you see, under "Interruptions of  
17 the delivery of lethal injection drugs" --

18 A. Uh-huh.

19 Q. -- and then it --

20 A. Yes.

21 Q. -- calls for what to do if that happens?

22 A. Yes.

23 Q. Do you know why you would do that, why you  
24 would switch to the secondary IV line?

25 A. That would mean that the individual is

1 unconscious.

2 Q. So if you have -- if the inmate is exhibiting  
3 signs of consciousness following the first set, and  
4 then it says to administer the second set -- do you  
5 see that?

6 A. When you're speaking of "set" are you  
7 speaking in whole or a certain drug in that set?

8 Q. I mean whole. So now you're going from red  
9 to blue.

10 A. Midazolam given in the first set, individual  
11 still showing signs of unconscious, switch to the  
12 second set, midazolam, not the first set of the two  
13 drugs. So it's not the whole set, it's the  
14 midazolam.

15 Q. Right. That's what -- I apologize. That's  
16 what I'm talking about, the midazolam sets --

17 A. That's the whole set.

18 Q. -- the red and blue set.

19 A. Yeah, midazolam.

20 Q. Right. Sorry about that. So my question is  
21 do you know how much total midazolam would be  
22 injected into an inmate at that point if you  
23 injected them with both the red and blue sets?

24 A. It's -- protocol spells it out how much it  
25 is.

1 Q. And do you know what the effects of that  
2 quantity of midazolam are on a human body?

3 A. I'm sorry?

4 Q. Do you know what the effects of that quantity  
5 of midazolam are on a human body?

6 A. No.

7 Q. Okay. And I think we talked about this  
8 before, but what happens if the prisoner is still  
9 conscious after the second set, the blue set of  
10 midazolam, is administered?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: As stated before, a call  
13 on my behalf would be to close blinds and curtains,  
14 consult with the doctor, and notify commissioner.

15 BY MR. KURSMAN:

16 Q. Would you call off the execution?

17 A. Commissioner the only one who can do that.

18 Q. Okay. And would you advise him to call off  
19 the execution at that point?

20 A. I don't advise him, he advises me.

21 Q. Okay. He does not ask for your advice on  
22 decisions?

23 A. We have never had to discuss that.

24 Q. If he advised you to proceed with the second  
25 drug, would you do it?

1 A. Second drug of...?

2 Q. So if the inmate received two sets of  
3 midazolam, the red and the blue --

4 A. Yes.

5 Q. -- and was still conscious --

6 A. Yes.

7 Q. -- and you called the warden and the warden  
8 said --

9 A. If I called the commissioner.

10 Q. Commissioner, I apologize. And you called  
11 the commissioner, and the commissioner said, "Please  
12 proceed with the execution," would you --

13 MR. SUTHERLAND: Object to the form.

14 BY MR. KURSMAN:

15 Q. -- would you tell the executioner to proceed?

16 A. Yes.

17 Q. Okay. Let's go to Exhibit 41.

18 (WHEREUPON, the above-mentioned  
19 document was presented, previously marked as  
20 Exhibit Number 41.)

21 BY MR. KURSMAN:

22 Q. Let me know when you get there.

23 A. There.

24 Q. Okay. And you see this is logs dated  
25 September 7, 2018?

1 A. Yes.

2 Q. Okay. Is this your handwriting right here?

3 A. Yes, it is.

4 Q. Okay. And are these the lethal injection

5 logs that we were discussing before?

6 A. Logs or inventory lists?

7 Q. Inventory list if that's what you call them.

8 Is that what this is, the inventory list?

9 A. Yes.

10 Q. Okay. So let's start at -- do you see

11 potassium chloride second from the bottom -- I mean,

12 second from the top. I apologize.

13 A. Yes.

14 Q. And it says 88 vials?

15 A. Yes.

16 Q. And it says, "Expire 6/1/2018." Do you see

17 that?

18 A. 50 vials?

19 Q. Yes.

20 A. Yes.

21 Q. Okay. Why it wasn't discarded by

22 September 7th, 2018?

23 A. Who said that it wasn't?

24 Q. Well, this is an inventory list, right?

25 A. Uh-huh.

1 Q. Okay. So my understanding of the inventory  
2 list was these are the drugs that you have on hand  
3 September 7, 2018. Am I right?

4 A. No.

5 Q. Okay. So can you explain to me what exactly  
6 this means, then, by potassium chloride, 50 vials  
7 expires 6/1/2018?

8 A. That is the expiration date for 50 vials of  
9 potassium chloride.

10 Q. And where was these 50 vials on  
11 September 7th, 2018, at the time you created this  
12 log?

13 A. They were stored in the armory.

14 Q. Okay. So my question to you is why weren't  
15 these 50 vials discarded?

16 A. As stated earlier, just because the date is  
17 September and this is June, that doesn't mean we  
18 discarded it in June. I explained that earlier,  
19 that just because six -- three months have went by  
20 and it's still there, that doesn't mean you have to  
21 discard just because it's expired. We eventually  
22 got around to doing it.

23 Q. Right. So my question only is why wasn't it  
24 discarded?

25 A. No explanation.

1 Q. Okay. Who decided that you could deviate  
2 from the protocol by not discarding them when they  
3 were expired?

4 A. As stated earlier, that was a joint decision  
5 between me and the designee.

6 Q. Okay. And how did you and the designee come  
7 to that decision?

8 A. We just said we will discard it the next time  
9 we inventory or we'll discard it eventually. No  
10 reason.

11 Q. Okay. And then if you go down one you have  
12 midazolam 280 vials expires 6/1/2018. Do you see  
13 that?

14 A. I do.

15 Q. So at this point the midazolam that expired  
16 on June 1st, 2018 still wasn't discarded, right?

17 A. According to this inventory ledger.

18 Q. Okay. And this inventory ledger is your  
19 handwriting, right?

20 A. That is correct.

21 Q. Okay. And is it accurate?

22 A. I would hope that it is.

23 Q. Okay. So why wasn't the midazolam that was  
24 expired June 1st, 2018 discarded at this time?

25 A. The midazolam, potassium chloride, as I



1     stated earlier, it just wasn't.

2     Q.       Okay. And who decided for the midazolam that  
3     you could deviate from the protocol that requires  
4     expired drugs to be discarded?

5     A.       I repeat, myself and the designee.

6     Q.       Okay. And did you consult with anybody in  
7     determining that you could deviate from the  
8     protocol?

9     A.       I consulted with the designee and we came  
10    with a joint decision.

11    Q.       Okay. And the -- let's go down to midazolam  
12    at the bottom. It says four vials expires  
13    7/26/2018. Do you see that?

14    A.       I do. Yes.

15    Q.       Okay. And then above it do you see it says  
16    40 days, on the right side?

17    A.       It says 40 who?

18    Q.       Forty days.

19    A.       I don't know what that -- I see a 40. I  
20    don't know if that's "days" or not.

21    Q.       Okay. If it does say 40 days, do you know  
22    what that would mean?

23    A.       I do not.

24    Q.       Okay. Do you know why the midazolam wasn't  
25    discarded at this point?

1 A. Do not.

2 (WHEREUPON, the above-mentioned  
3 document was presented, previously marked as  
4 Exhibit Number 42.)

5 BY MR. KURSMAN:

6 Q. Okay. Let's go to Exhibit 42. And let's go  
7 to page 2 of that exhibit.

8 And do you see, on page 2, at 10/30/2018, do  
9 you see that at the very top? It says --

10 MR. SUTHERLAND: I'm sorry, Alex, page 2  
11 of 42?

12 MR. KURSMAN: That was my problem. I  
13 went way past.

14 BY MR. KURSMAN:

15 Q. So let's go back to page 2. I'm sorry about  
16 that.

17 MR. SUTHERLAND: Of 42?

18 MR. KURSMAN: Of 42.

19 MR. SUTHERLAND: Okay.

20 BY MR. KURSMAN:

21 Q. And do you see 7/27/2018, it says,  
22 "Midazolam, 50 milligrams per milliliter"? Do you  
23 say that compounded at the very top?

24 A. Yes.

25 Q. Okay. Is this your handwriting also?

1 A. Looks like my handwriting.

2 Q. Okay. And do you see it says, "In freezer, 4  
3 degrees"?

4 A. Yes.

5 Q. And then if you go down a bit to 8/8/2018.

6 A. Yes.

7 Q. Okay. And do you see it says freezer  
8 temperature next to 1:30 p.m. from 5 degrees to 48  
9 degrees?

10 A. Yes.

11 Q. Do you know why the temperature in the  
12 freezer changed from 7/27 to 8/8?

13 A. 7/27, 4 degrees; 8/8, 1:30, 5 to 48. It  
14 appears that the midazolam had been moved from the  
15 freezer down to the refrigerator.

16 Q. Right. My question, though, is just a bit  
17 different, which is do you know why the freezer  
18 temperature changed from 4 degrees to 5 degrees?

19 A. One temp?

20 Q. 1 degree.

21 A. I do not.

22 Q. Okay. And then you see it says the  
23 refrigerator is at 48 degrees?

24 A. Yes.

25 Q. Okay. Is that also your handwriting?

1 A. Yes.

2 Q. Who determined that the temperature of the  
3 refrigerator should be 48 degrees?

4 MR. SUTHERLAND: Don't identify an  
5 individual by name.

6 Object to the form.

7 THE WITNESS: Determined that it's at  
8 48? If it's stored according to pharmacy  
9 prescribing and has to be kept, I would say it was  
10 within the guidelines of the temp.

11 BY MR. KURSMAN:

12 Q. And did you ask the pharmacist what  
13 temperature the refrigerator should be?

14 A. No.

15 Q. Okay. Do you know if anybody did?

16 A. I don't know.

17 Q. Okay. Let's go to the next page. And you  
18 see it says 10/10/18 on the left side?

19 A. Yes.

20 Q. Do you see that the freezer is now at  
21 1 degree?

22 A. Yes.

23 Q. And the refrigerator is at 44 degrees?

24 A. Yes.

25 Q. Okay. Did anyone keep track of this

1 temperature change?

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: Because it was 1 degree?

4 BY MR. KURSMAN:

5 Q. Do you know why the temperature changed?

6 A. No.

7 Q. Now let's go two pages over. There should be  
8 a -- and you see it's 10/31/18 on the left side?

9 A. Yes.

10 Q. And it says, "Remove four vials of  
11 midazolam"?

12 A. Yes.

13 Q. Is that your handwriting?

14 A. Yes.

15 Q. Is there a reason that the temperature isn't  
16 noted at this point?

17 A. (Reviewing) Hoping that it wasn't redacted.  
18 The right-hand line box looks pretty thick. I -- I  
19 just don't know why it's not there.

20 MR. KURSMAN: Okay. To the extent that  
21 counsel for defendants have redacted the temperature  
22 of log -- the temperatures on log 42, and that would  
23 be Defendants' Initial Disclosure 838, we'd request  
24 an unredacted copy of that.

25 MR. SUTHERLAND: Noted.

1 BY MR. KURSMAN:

2 Q. Let's go to the next page. And you'll see  
3 it's Defendants' Initial Disclosure 839. And on the  
4 left-hand side it says 11/20/2018?

5 A. Yes.

6 Q. Is this your handwriting also?

7 A. Yes.

8 Q. Okay. Now, here it says freezer temperature  
9 is 7 degrees.

10 MR. SUTHERLAND: I'm sorry, Alex, can  
11 you --

12 MR. KURSMAN: Sure. It's Defendants'  
13 Initial Disclosure 839, still on Exhibit 42.

14 MR. SUTHERLAND: Okay. Gotcha.

15 BY MR. KURSMAN:

16 Q. Do you see it says, "Freezer temperature  
17 7 degrees"?

18 A. Yes.

19 Q. Do you know why the freezer was 7 degrees on  
20 this day?

21 A. Do not.

22 Q. And do you know why it rose in temperature  
23 from 6 degrees only a month earlier?

24 A. Do not.

25 Q. Okay. Did anybody discuss getting a new

1 freezer or refrigerator?

2 A. Not to my knowledge.

3 Q. Okay. Is there an interior temperature gauge  
4 on the fridge or freezer aside from the thermometer?  
5 Meaning is it an electronic fridge that you can set  
6 the temperature, or do you just put it on cold?

7 A. I'm not sure. It's probably you just put it  
8 on cold.

9 (WHEREUPON, the above-mentioned  
10 document was presented, previously marked as  
11 Exhibit Number 43.)

12 BY MR. KURSMAN:

13 Q. Okay. Now let's go to Exhibit 43. Do you  
14 see at the top it says February 11, 2020?

15 A. Yes.

16 Q. And then it says, "Received midazolam," and  
17 then it says, "8 to 10 milliliter vials."

18 Do you see that?

19 A. Yes.

20 Q. 8 by 10 milliliter vials?

21 A. Yes.

22 Q. Doesn't that conflict with the pharmacist's  
23 instructions to have 10 milliliter vials?

24 A. Wouldn't know that.

25 Q. Okay. Well, why don't we go to Exhibit 2.

1           And do you see in Exhibit 2 under "Items you  
2 will need," No. 1 it says, "Four 5 milliliter  
3 midazolam 50 milligram per milliliter vials"?

4       A.       I do see that.

5       Q.       You see that? Is there a reason that the  
6 instructions call for 5 milliliter vials but on the  
7 log it has 10 milliliter vials?

8       A.       Wouldn't know that.

9       Q.       Okay. Did you write this down?

10      A.       I did -- no, I didn't write that down, I'm  
11 sorry.

12      Q.       Okay. Who wrote this? Who wrote this down?

13      A.       That's not my handwriting.

14      Q.       Do you know who wrote this down?

15      A.       I would say the designee.

16      Q.       Okay. And after the designee records logs,  
17 do you double check those logs to make sure they're  
18 accurate?

19      A.       I do.

20      Q.       Okay. Now, if we could turn to -- well, let  
21 me ask you this. Were you the warden when Donnie  
22 Johnson was executed?

23      A.       Yes, I was.

24      Q.       Okay. And do you remember how long the  
25 execution took?



1 A. Not to the minute, I do not.

2 Q. Okay. What would you guess?

3 MR. SUTHERLAND: Object to the form.

4 THE WITNESS: What period of time are  
5 you talking? From beginning of the -- what period  
6 of time were you talking? From the time we  
7 assembled to the end? Or the time that chemicals  
8 began to be administered to the time it was  
9 pronounced? Or what period of time are you  
10 referring to?

11 BY MR. KURSMAN:

12 Q. Well, let's go to, to make it easier --  
13 because I don't want to trick you. This isn't,  
14 like, a trick. Let's go to Exhibit 63.

15 (WHEREUPON, the above-mentioned  
16 document was presented, previously marked as  
17 Exhibit Number 63.)

18 THE WITNESS: Okay, I'm there.

19 BY MR. KURSMAN:

20 Q. Okay. And do you see on page 92, which would  
21 be page 2 of the execution procedure --

22 A. Yes.

23 Q. -- at 1919, "Warden orders Execution Team to  
24 proceed"? And then at 1935, "Lethal Injection  
25 process completed"?

1 A. Yes, I see both of those.

2 Q. So would that be a total of 16 minutes? Does  
3 that sound about right?

4 A. About right.

5 Q. Okay. And are you the person who declared  
6 Donnie Johnson unconscious?

7 A. Yes.

8 Q. And what did you observe during the  
9 execution?

10 MR. SUTHERLAND: Object to the form.

11 THE WITNESS: From which point?

12 BY MR. KURSMAN:

13 Q. From the point that you ordered the execution  
14 to proceed to the point that the blinds and curtains  
15 were closed.

16 A. From the time that I ordered for it to  
17 proceed? And that's beginning to push the first  
18 vial of midazolam?

19 Q. That's right.

20 A. To the time we closed the curtains?

21 Q. That's right.

22 A. Okay. Once the signal was given to proceed  
23 with pushing of the first vial of midazolam,  
24 Mr. Johnson was just laying there. Mr. Johnson  
25 starts speaking words, biblical verses. He asked me

1 as the warden if he could sing. And I said, "Sing  
2 away."

3 And he began singing, sung a beat of a song,  
4 sung a piece of another song. And I would describe  
5 him as just sung until he went to sleep.

6 Q. And did he sing while the midazolam was being  
7 pushed?

8 MR. SUTHERLAND: Object to the form.

9 THE WITNESS: Yes, he was.

10 BY MR. KURSMAN:

11 Q. And did you notice Mr. Johnson's fingers  
12 moving after the midazolam was pushed?

13 MR. SUTHERLAND: Object to the form.

14 THE WITNESS: Best of my recollection.  
15 I wasn't -- I was mostly focusing on his facial  
16 features because he was singing.

17 BY MR. KURSMAN:

18 Q. How about when you checked for consciousness?

19 A. I did not notice any finger movement.

20 Q. Did you look at his fingers while you were  
21 checking for consciousness?

22 A. I can't say that I did or didn't.

23 Q. Okay. Is that part of the consciousness  
24 check, to look at an inmate's fingers?

25 A. Not necessarily, just parts of his anatomy.

1 Q. Okay. Do you know whether a second dose of  
2 midazolam was prepared for that execution? A second  
3 dose meaning the blue set?

4 A. I do not know that.

5 Q. Okay. And were you involved in any of the  
6 practice sessions leading up to Mr. Johnson's  
7 execution?

8 A. Every one.

9 Q. Okay. When did those practice sessions take  
10 place?

11 A. Don't know exact dates.

12 Q. Okay. Let's go to -- let's go to Exhibit 62.

13 (WHEREUPON, the above-mentioned  
14 document was presented, previously marked as  
15 Exhibit Number 62.)

16 BY MR. KURSMAN:

17 Q. And do you see at the top that says,  
18 "Chemical Preparation Time Sheet"?

19 A. Yes.

20 Q. And the date is 5/16/19?

21 A. Yes.

22 Q. And that's the date of Donnie Johnson's  
23 execution, right?

24 A. I don't recall the exact date.

25 Q. Well, if you go to Exhibit 63, you'll see

1 that it's the same date?

2 A. Okay.

3 Q. So would this be the chemical preparation  
4 time sheet for Donnie Johnson's execution?

5 A. Yes, it appears to be it.

6 Q. Okay. Do you know why the vecuronium bromide  
7 and the potassium chloride were prepared two hours  
8 before the execution but the midazolam wasn't  
9 prepared until you ordered the execution to proceed?

10 A. Do not.

11 Q. Is that part of your training, that the  
12 midazolam isn't prepared until the execution is  
13 ordered to proceed?

14 MR. SUTHERLAND: Object to the form.

15 THE WITNESS: Well, no.

16 BY MR. KURSMAN:

17 Q. Okay. Well, who decides when to prepare the  
18 midazolam?

19 A. That would be the executioner.

20 Q. And does anybody oversee the executioner in  
21 terms of when to prepare the different drugs?

22 A. He and his assistants.

23 Q. Does he follow anybody's direction when  
24 deciding what time to prepare each drug?

25 MR. SUTHERLAND: Objection, form.

1 THE WITNESS: That I wouldn't know.

2 BY MR. KURSMAN:

3 Q. And during the execution, were you aware that  
4 the midazolam was not yet prepared until you ordered  
5 the execution to proceed?

6 A. No.

7 MR. SUTHERLAND: Objection, form.

8 BY MR. KURSMAN:

9 Q. Okay. Let's go to Exhibit 5.

10 (WHEREUPON, the above-mentioned  
11 document was presented, previously marked as  
12 Exhibit Number 5.)

13 BY MR. KURSMAN:

14 Q. And let me know when you get there.

15 A. I'm there.

16 Q. Do you recognize this log?

17 A. No.

18 Q. Okay. Are you aware that this is a log from  
19 the pharmacist?

20 MR. SUTHERLAND: Objection, form.

21 THE WITNESS: No.

22 BY MR. KURSMAN:

23 Q. Okay. Do you see that on 4/24 55 milliliters  
24 of midazolam were made?

25 A. Yes.

1 Q. Do you see it says discard after 5/1?

2 A. Yes.

3 Q. Okay. And do you see that the next time  
4 midazolam was made was 7/5/19?

5 A. Line below it, yes.

6 Q. Okay. So at least according to these logs,  
7 the pharmacist didn't make any non-expired drugs  
8 between 5/1/2019 and 7/15/2019, right?

9 MR. SUTHERLAND: Objection, form.

10 THE WITNESS: If that's what this log is  
11 saying, yes.

12 BY MR. KURSMAN:

13 Q. Okay. So do you know what midazolam was used  
14 on May 16th, 2019, for the execution of Donnie  
15 Johnson?

16 A. It would have had to have been the midazolam  
17 that was prescribed for Mr. Johnson.

18 Q. And would that be the midazolam that was made  
19 on 4/24?

20 A. That I could not know, I would not know.

21 Q. Okay. Let's move to another execution. Were  
22 you the warden during the execution of Billy Ray  
23 Irick?

24 A. Yes.

25 Q. And were you involved in the execution in any

1 other capacity aside from warden?

2 A. (Pause)

3 Q. Were you involved in the execution in any  
4 other capacity aside from your role as warden?

5 A. Irick and Johnson?

6 Q. Yeah.

7 A. Yes.

8 Q. You were?

9 A. Uh-huh.

10 Q. What other roles did you play in the  
11 execution?

12 A. Five other executions as a warden.

13 Q. Oh, no, I apologize. What I'm asking is did  
14 you have any other role in the execution -- in  
15 the -- in Billy Ray Irick's execution, aside from  
16 your role as the warden?

17 A. No.

18 Q. Okay. And can you describe for me, like you  
19 described for me for Mr. Johnson's execution -- can  
20 you describe for me what you observed from the time  
21 you ordered the execution to proceed to the time  
22 that the blinds were drawn?

23 A. Mr. Irick was laying on the gurney. He was a  
24 talker, as he always was, and even after I had  
25 ordered him to begin to push, he was still speaking



1 with myself and the AW, saying things like, "Don't  
2 be down on yourself, it's not you all's fault."

3 He laid -- he laid still. He began to  
4 snore, like he went to sleep, just snoring. And  
5 then once he stopped snoring, he just -- he just  
6 went to sleep, into a deeper sleep.

7 Q. And was that during the midazolam being  
8 pushed?

9 A. Yes.

10 Q. And at that point did you then do a  
11 consciousness check?

12 A. Yes.

13 Q. Okay. And did you observe Mr. Irick's  
14 fingers?

15 A. I can't say what I observed. I just  
16 observed. I may have and I may not have.

17 Q. Okay. When Mr. Irick was telling you it's  
18 not your fault, how did that make you feel?

19 MR. SUTHERLAND: Objection to form.

20 THE WITNESS: Feelings? I -- I really  
21 didn't have feelings. He apologized to me that it  
22 wasn't my fault or his fault, as he did with other  
23 staff members, what he had got himself involved in.

24 I hear that a lot, not just from  
25 execution victims, but other individuals as well. I

1 mean, that's not the first time I heard that.

2 Mr. Johnson did the same thing. And several other  
3 individuals did the same thing.

4 BY MR. KURSMAN:

5 Q. And did you know Mr. Irick or Mr. Johnson  
6 before the execution?

7 A. I did.

8 Q. Okay. And how does it feel serving as part  
9 of the execution team when you know these  
10 individuals?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: Any human that have  
13 respect for any individual, regardless of who they  
14 are or where they are or how they are, quite  
15 naturally acknowledged that individual. You will  
16 have the same feeling regardless if it was coming  
17 from Mr. Irick, Mr. Johnson, or the other five, just  
18 as if I knew you beforehand and you apologizing to  
19 me, of course, if you have built a rapport, if you  
20 want to use that word, with individuals, quite  
21 naturally, you know, you're going to have -- it's  
22 going to go through your mind. You'll think about  
23 it. You acknowledge it.

24 BY MR. KURSMAN:

25 Q. Right. Do you think you're still able to

1 proceed in the same fashion you do during training  
2 when you're going through these executions where  
3 people are being executed who you know?

4 MR. SUTHERLAND: Objection to the form.

5 THE WITNESS: Please repeat.

6 BY MR. KURSMAN:

7 Q. Sure. So in these trainings when you're  
8 doing them, you know, it's not with a live -- it's  
9 with a live body, but the person isn't actually  
10 being executed. And then when you go into these  
11 executions, the person who's being executed is a  
12 person that you know because you're the warden.

13 Does that change the dynamics of what goes  
14 on?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: Not really.

17 BY MR. KURSMAN:

18 Q. Okay. How about after, after the execution  
19 is over, when you go home, is there anything you do  
20 to decompress?

21 MR. SUTHERLAND: Same objection.

22 THE WITNESS: I have -- I consider  
23 myself to be a strong faith believer. And that's  
24 where I draw my substance from. I don't -- if I may  
25 be able to elaborate, I don't -- I don't look at it

1 as something that I did, per se, that was mean,  
2 evil, or something out of the ordinary.

3 Of course, I'm strong in my faith. I  
4 have performed seven executions. Of course, you  
5 think about it beforehand, during, and after. But  
6 it's just something you just learn to -- as an  
7 individual, to deal with and move on.

8 BY MR. KURSMAN:

9 Q. Do you think about leaving the job at all  
10 because of the amount of executions that you're  
11 doing?

12 MR. SUTHERLAND: Objection to the form.

13 THE WITNESS: Never.

14 BY MR. KURSMAN:

15 Q. Okay. So let's go to Exhibit 60.

16 (WHEREUPON, the above-mentioned  
17 document was presented, previously marked as  
18 Exhibit Number 60.)

19 MR. SUTHERLAND: I'm sorry, which one  
20 now?

21 MR. KURSMAN: 60, six zero.

22 BY MR. KURSMAN:

23 Q. And do you see this says at the top,  
24 "Declaration of David Lubarsky, M.D."?

25 A. Yes.

1 Q. Okay. And do you -- do you see it says,  
2 under paragraph 3, "The official media witnesses  
3 describe physical behavior of Mr. Irick after the  
4 drugs were administered that I recognize to be signs  
5 that Mr. Irick was not in a plane of surgical  
6 anesthesia during his execution. This is important  
7 because an inmate who is not placed in a plane of  
8 surgical anesthesia is not protected from the  
9 subsequent torturous effects of the lethal injection  
10 process. These signs and indicators include that  
11 Mr. Irick," and then in quotation, "gulped for an  
12 extended period of time, was choking, gasping,  
13 coughing, and that his stomach was moving up and  
14 down. Published media accounts report Irick did not  
15 appear to react physically to the vecuronium  
16 bromide -- did appear" -- I apologize -- "did appear  
17 to react physically to the vecuronium bromide. He  
18 jolted and produced what sounded like a coughing or  
19 choking noise. He moved his head slightly and  
20 appeared to briefly strain his forearm against the  
21 restraints."

22 Did you notice those movements during  
23 Mr. Irick's execution?

24 A. No.

25 Q. None of them?

1 A. No.

2 Q. Okay. Do you have any opinion as to why  
3 media witnesses would say this?

4 MR. SUTHERLAND: Objection to the form.

5 THE WITNESS: Opinion? My personal  
6 opinion?

7 BY MR. KURSMAN:

8 Q. Yes.

9 A. I don't know why media do what they do, but I  
10 know everything they report firsthand is not true.  
11 And that's not what I've been told or heard, it's  
12 what I've actually witnessed myself with media. So  
13 everything that they write or say, no, it's not  
14 always true.

15 Q. Okay. So let's go to Exhibit 59.

16 (WHEREUPON, the above-mentioned  
17 document was presented, previously marked as  
18 Exhibit Number 59.)

19 BY MR. KURSMAN:

20 Q. And do you see at the top this is -- it says,  
21 "Tennessee death row inmate Billy Ray Irick  
22 apologizes before being executed"?

23 And then if we go to the second page, it  
24 says, "Then the execution proceeded. A minute  
25 later, his eyes closed. Snoring and heavy

1 breathing. At 7:34 p.m., there was coughing,  
2 huffing and deep breaths. An attendant began  
3 yelling 'Billy' and checked the inmate and grabbed  
4 his shoulder, but there didn't seem to be any  
5 reaction."

6 Would that attendant be you?

7 A. That attendant would be me.

8 Q. Okay. And what is the reporter describing at  
9 that point?

10 A. Me being the attendant and me reading this,  
11 it sounds like all of this happened that didn't  
12 happen. A lot -- a lot of this didn't happen. But  
13 it sounds as though -- they're making it sound as  
14 though everything is right there within five seconds  
15 or ten seconds of itself. That's not true.

16 Q. Okay.

17 A. They making it sound like snoring and heavy  
18 breathing was heard at 7:30 and then at 7:34 there  
19 were coughing, huffing and deep breathing, deep  
20 breaths, and then the attendant began yelling  
21 "Billy," as though I'm just yelling "Billy" at the  
22 time he was doing that. That's not true.

23 Q. Okay.

24 A. At the time I performed my conscious test --  
25 check, none of this was going on. None of it went

1 on other than him snoring and falling asleep.

2 Q. Okay. So when you're yelling "Billy," you're  
3 saying that's during the consciousness check?

4 A. That's during the consciousness check. They  
5 make it read right here as though he's choking and  
6 I'm calling his name.

7 Q. Okay. So you -- let me ask you this first:  
8 Did you observe him coughing, huffing, and deep  
9 breaths?

10 A. I observed him snoring and falling asleep.

11 Q. Okay. And then after that, is that when you  
12 performed the consciousness check --

13 A. Yes.

14 Q. -- when you say he fell asleep?

15 A. Yes.

16 Q. Okay. And then -- let me continue. Then it  
17 says, "Minutes later, Irick let out a cough or  
18 choking sound, as his face turned dark purple."

19 A. That's what they say.

20 Q. Do you -- and my question to you is do you  
21 recall that?

22 A. No.

23 Q. Okay. What do you recall after the  
24 consciousness check?

25 A. I recall nothing. Once the conscious check



1 was done, there was nothing else within Irick.

2 Q. Nothing else -- I'm sorry?

3 A. Nothing else within him.

4 Q. Okay. And what does that mean, "nothing else  
5 within Irick"?

6 A. It means that he was asleep and never woke up  
7 again.

8 Q. Okay. Do you know if Mr. Irick's fingers  
9 were taped to the gurney during the execution?

10 A. Yes.

11 Q. Why?

12 A. To prevent gestures.

13 Q. To who?

14 A. The victim's family.

15 Q. Did you observe any movements of Mr. Irick's  
16 fingers during the execution?

17 A. No, I can't -- what you just said, you  
18 couldn't see fingers anyway if they're taped.

19 Q. Did you look at his fingers?

20 A. I can't say that I did or didn't.

21 Q. Okay. Do you know if a second dose of  
22 midazolam, meaning the blue set, was prepared during  
23 Mr. Irick's execution?

24 A. No, I do not.

25 Q. Okay. And are you aware that the protocol

1 calls for both a red set and a blue set to be  
2 prepared?

3 A. If needed, yes.

4 Q. Okay. So it's your understanding that the  
5 blue set is only prepared if needed?

6 A. That would be my understanding.

7 Q. Okay. What would you have done if Mr. Irick  
8 had still been -- if you had determined Mr. Irick  
9 was still conscious --

10 MR. SUTHERLAND: Objection --

11 BY MR. KURSMAN:

12 Q. -- following the injection of the red set of  
13 midazolam?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: Red set being the second  
16 set?

17 BY MR. KURSMAN:

18 Q. The red set being the first set.

19 A. First set? I would have done what the  
20 protocol spelled out.

21 Q. Okay. Let's go to Exhibit 58.

22 (WHEREUPON, the above-mentioned  
23 document was presented, previously marked as  
24 Exhibit Number 58.)

25 ///

1 BY MR. KURSMAN:

2 Q. And if you go to 965, which is the third  
3 page, do you see that the potassium chloride and  
4 vecuronium bromide were prepared at 1724 and 1728?

5 A. Third page of this exhibit?

6 Q. Yeah, would be Defendants' Initial  
7 Disclosure 965.

8 A. Chemical preparation time set on 8/9/18?

9 Q. Yep.

10 A. Okay, red.

11 Q. Yep.

12 A. And you're referring to...?

13 Q. Vecuronium bromide and potassium chloride.  
14 Do you see that they were prepared at 1724 and 1728?

15 A. Yes.

16 Q. Do you know why the midazolam wasn't prepared  
17 until two hours later, at the time of the execution?

18 A. Do not.

19 Q. Okay. Is this how you train for executions?

20 MR. SUTHERLAND: Object to the form.

21 THE WITNESS: We do paperwork just like  
22 we do in an actual execution, correct.

23 BY MR. KURSMAN:

24 Q. But my question is -- my question is why is  
25 this inconsistent with how you train?

1 MR. SUTHERLAND: Objection to the form.

2 BY MR. KURSMAN:

3 Q. So maybe it'll be easier if I do this. Let's  
4 go to Exhibit 65.

5 @ (WHEREUPON, the above-mentioned  
6 document was presented, previously marked as  
7 Exhibit Number 65.)

8 BY MR. KURSMAN:

9 Q. Let me know when you get there.

10 A. I'm there.

11 Q. Okay. Do you see it's a chemical preparation  
12 time sheet and it's at a training dated 4/14/21?

13 A. Yes.

14 Q. And do you see the midazolam is prepared at  
15 12:45?

16 A. Yes.

17 Q. And then the vecuronium bromide at 12:48?

18 A. Yes.

19 Q. And the potassium chloride at 12:50?

20 A. Yes.

21 Q. So if we go back to Exhibit 58 at page 3, and  
22 this is the same with the previous execution, why is  
23 the executioner waiting until you direct the  
24 execution to proceed to prepare the midazolam?

25 A. That I wouldn't know, as stated earlier.

1 Q. Do you know if this is a deviation from the  
2 protocol?

3 A. Wouldn't know that.

4 Q. Okay. When you're not at trainings and the  
5 associate warden comes in your place, does he report  
6 back to you to let you know how it went?

7 A. He do.

8 Q. Are there any written communications  
9 documenting that?

10 A. No.

11 Q. Okay. Let's go to Exhibit 66.

12 (WHEREUPON, the above-mentioned  
13 document was marked as Exhibit Number 66.)

14 BY MR. KURSMAN:

15 Q. Do you see this on 5/6/18?

16 A. Yes.

17 Q. Is this one of the trainings that you missed?

18 A. Oh, I couldn't say whether it was or wasn't.

19 Q. Okay. Well, if you could go to the last  
20 page, page 93?

21 A. Okay.

22 Q. Do you see that it's a -- there's a space for  
23 the warden to sign?

24 A. Yes.

25 Q. Do you know why it wouldn't be signed?

1 A. Must have been an oversight.

2 Q. Okay. Do you know why most of the trainings  
3 start at 1 p.m.?

4 A. That's usually the time that we -- that I  
5 select.

6 Q. Why don't you do the trainings at 7 p.m.?

7 MR. SUTHERLAND: Object to the form.

8 THE WITNESS: We just don't. We just  
9 train at 1.

10 BY MR. KURSMAN:

11 Q. Okay. And do you take the training  
12 seriously?

13 A. If you only knew, yes, I do.

14 Q. Okay. Well, let's go to Exhibit 68.

15 (WHEREUPON, the above-mentioned  
16 document was marked as Exhibit Number 68.)

17 THE WITNESS: 68?

18 BY MR. KURSMAN:

19 Q. 68. Do you see on the -- on the first page  
20 you have the inmate name Wild Bill?

21 A. Never seen that before.

22 Q. Okay. Do you think --

23 A. 2/22/17.

24 Q. Do you think that is indicative of taking the  
25 training seriously?

1 A. I would think so, being that 2/22/17, I was  
2 not the warden, but...

3 Q. When did you become the warden?

4 A. October of '17.

5 Q. Okay. You were the associate warden at this  
6 time, though?

7 A. Yes, I would have been.

8 Q. Okay. Do you think describing the inmate as  
9 Wild Bill is indicative of taking the training  
10 seriously?

11 A. Most definitely.

12 Q. Oh, you do? Okay.

13 Let's go to the second page. And do you see  
14 that says 4/19/17?

15 A. Uh-huh.

16 Q. And the inmate's name is Con Demned?

17 A. I do see that.

18 Q. Do you think that's indicative of taking the  
19 training seriously?

20 A. Most definitely.

21 Q. Okay. Let's go to the next page. And that  
22 is on 6/28/17?

23 A. Yes.

24 Q. And do you see the inmate's name is Annie  
25 Oakley?

1 A. Yes.

2 Q. Do you think that's indicative of taking the  
3 training seriously?

4 A. I would.

5 Q. Okay. Let's go to the next page.

6 A. Okay.

7 Q. And that's 7/26/17?

8 A. Uh-huh.

9 Q. And do you see the inmate name is Doc  
10 Holliday?

11 A. I do.

12 Q. Do you think that's indicative of taking the  
13 training seriously?

14 A. I do.

15 Q. Okay. Let's go to the next page. And you  
16 see this is August 16, 2017?

17 A. Yes.

18 Q. And you have the inmate name as Tom Thumb.  
19 Do you think that's indicative of taking the  
20 training seriously?

21 A. Yes.

22 Q. Okay. Now we're in October of 2017, and this  
23 is when you were the warden. Do you see you have  
24 the inmate name as John Henry?

25 A. I do.



1 Q. Do you think that's indicative of taking the  
2 training seriously?

3 A. I do.

4 Q. Okay. And the next training we have  
5 12/20/17?

6 A. Uh-huh.

7 Q. And you have the inmate name as Billy the  
8 Kid?

9 A. Yes.

10 Q. Do you think using the name Billy the Kid is  
11 appropriate for a training?

12 A. I do not think it's appropriate.

13 Q. Okay. Do you think any of these names are  
14 appropriate?

15 A. I do not.

16 Q. Okay. Do you know who decided to write these  
17 names during an execution training?

18 MR. SUTHERLAND: Don't say any  
19 individuals' names.

20 THE WITNESS: I do not.

21 BY MR. KURSMAN:

22 Q. Without identifying the individual, do you  
23 know the role of the person that picked these names?

24 A. I do not.

25 Q. Okay. And when the execution team trains,

1 has that been referred -- have you heard the term  
2 "band practice" before?

3 A. That was a term that they was utilizing when  
4 I first arrived at the facility, which we later  
5 changed.

6 Q. And was that term used to refer to execution  
7 trainings?

8 A. Correct.

9 Q. Okay. And you changed that?

10 A. Correct.

11 Q. And why did you change that?

12 A. I was informed by Legal to change it.

13 Q. Okay. And would have you changed it had you  
14 not been informed by Legal?

15 MR. SUTHERLAND: Object to the form.

16 THE WITNESS: I believe in things being  
17 done decent and in order. If I thought that  
18 something was wrong with it, most definitely I would  
19 have changed it. "Band practice" doesn't sound  
20 kosher for something of the sort, so, yes, I  
21 probably would have changed it.

22 BY MR. KURSMAN:

23 Q. Okay.

24 A. Just like these names, and I know I'm  
25 continuing to elaborate, I stopped that.

1 Q. So you were aware that --

2 A. I wasn't aware, but then it came to me that  
3 names were being used of the sort and we -- if you  
4 look, you won't find any more of that sort.

5 Q. And when did it come to your attention?

6 A. Probably was in '17, late '17.

7 Q. And do you know if it was the executioner who  
8 was writing these names?

9 A. No --

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: -- I do not know that.

12 BY MR. KURSMAN:

13 Q. Do you know who it was?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: I do not know that.

16 BY MR. KURSMAN:

17 Q. Did you have a conversation with the  
18 execution team about these names?

19 A. I remember having a conversation saying, "We  
20 will use John and Jane Doe."

21 Q. Okay. But you didn't ask who on the team has  
22 been writing these names?

23 A. I did not.

24 Q. Okay. Was it the recorder?

25 A. I don't know that.

1 MR. SUTHERLAND: Objection to the form.

2 (Reporter asked for clarification.)

3 BY MR. KURSMAN:

4 Q. Are you aware that some states perform  
5 executions by firing squad?

6 A. I'm not aware.

7 Q. Okay. Are you aware that Utah performs  
8 executions by firing squad?

9 MR. SUTHERLAND: Objection to the form.

10 THE WITNESS: No.

11 BY MR. KURSMAN:

12 Q. Okay. Do you carry a firearm?

13 A. No.

14 Q. Were you required to complete firearm  
15 training as an employee of TDOC?

16 A. Not required.

17 Q. Did you -- did you complete firearm training  
18 as an employee of TDOC?

19 A. Yes.

20 Q. Did you complete firearm training aside from  
21 the training involved with your employment as -- in  
22 TDOC?

23 A. No.

24 Q. Okay. Do you know of anyone at TDOC that is  
25 qualified to use a firearm?

1 A. Repeat.

2 Q. Do you know of anyone at TDOC that is  
3 qualified to use a firearm?

4 A. Yes.

5 Q. Okay. Do you know if any members of the  
6 execution team are qualified to use firearms?

7 A. Yes.

8 Q. How many members?

9 A. Wouldn't know a number without guessing, but  
10 there are some.

11 Q. Would you guess over half?

12 A. (Indicating)

13 Q. Would you guess over half?

14 A. Yes.

15 Q. Does TDOC provide firearms training?

16 A. Yes.

17 Q. Does TDOC have access to a firearms range?

18 A. Range?

19 Q. A range.

20 A. Yes.

21 Q. To a shooting range?

22 A. Yes.

23 Q. Does TDOC own firearms?

24 A. Yes.

25 Q. Can TDOC readily acquire firearms?

1 A. That would be a question --

2 MR. SUTHERLAND: Object to the form.

3 THE WITNESS: -- that would be above me  
4 if it was readily to acquire.

5 BY MR. KURSMAN:

6 Q. It would be above you to acquire firearms?  
7 As the warden, do you ever put in orders for  
8 firearms?

9 A. No.

10 Q. Okay. Does the commissioner ever put in  
11 orders for firearms?

12 MR. SUTHERLAND: Object to the form.

13 THE WITNESS: That I wouldn't know.

14 BY MR. KURSMAN:

15 Q. Okay. Does TDOC own ammunition?

16 A. Yes.

17 Q. Does TDOC have facilities where a firing  
18 squad execution could take place?

19 MR. SUTHERLAND: Object to the form.

20 THE WITNESS: I would not know what that  
21 would consist of.

22 BY MR. KURSMAN:

23 Q. Do you think TDOC could execute someone by  
24 firing squad?

25 MR. SUTHERLAND: Object to the form.

1 THE WITNESS: I would not know what it  
2 consists of to have those accommodations, to say  
3 "yes" or "no," but I will say "no."

4 BY MR. KURSMAN:

5 Q. You would say "no"?

6 A. Yes.

7 Q. Why?

8 A. I've never seen a firing squad. I know the  
9 facilities that we have, and by me not knowing what  
10 those accommodations are, so I can't speculate and  
11 speak on that.

12 Q. Okay. So why would you say, no, TDOC could  
13 not execute someone by firing squad?

14 A. Well, we pride ourself, and it's part of our  
15 mission, to promote safe and secure facilities as  
16 well -- as well as good community cooperation,  
17 participation. To shoot someone, I would say, even  
18 though I don't know what it requires for a firing  
19 range and an open range with the individuals that  
20 would have to be there to observe and some possibly  
21 not observing that shouldn't even be there that  
22 would be observing, I would say that that would be  
23 unbecoming. That's why I said "no."

24 Q. Okay. But you don't think electrocution is  
25 unbecoming?

1 MR. SUTHERLAND: Objection to the form.

2 THE WITNESS: Electrocution is not in an  
3 outdoor area as though -- same thing we have as far  
4 as the firing range, it's enclosed, concealed, and  
5 only certain individuals allowed to be there to  
6 witness or view.

7 BY MR. KURSMAN:

8 Q. So you think it's unbecoming because it would  
9 be outside? The firing squad?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: I think it's unethical.

12 BY MR. KURSMAN:

13 Q. Okay. But you don't think electrocution is  
14 unethical?

15 MR. SUTHERLAND: Objection to the form.

16 THE WITNESS: Electrocution is nothing  
17 to shoot someone out in open range.

18 BY MR. KURSMAN:

19 Q. I'm sorry, electrocution is what?

20 A. Nothing compared to probably shooting an  
21 individual out in open range.

22 Q. And what expertise do you have to compare the  
23 two?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: The only expertise I have



1 in regards to electrocution is what I've observed  
2 myself. I've never observed a firing squad/range  
3 type of execution.

4 BY MR. KURSMAN:

5 Q. So how can you compare the two?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: I can't.

8 BY MR. KURSMAN:

9 Q. Okay. But didn't you just do that?

10 A. Well, I said it would be unethical to shoot  
11 someone out in open -- in the eyes of the public.  
12 And you asked me about electrocution, is it  
13 unethical inside of a concealed place with certain  
14 individuals.

15 Q. Sure. What if you could perform a firing  
16 squad, not in front of the public, on TDOC's grounds  
17 where the public obviously isn't allowed?

18 MR. SUTHERLAND: What's the question,  
19 Alex? I'm sorry.

20 BY MR. KURSMAN:

21 Q. Would TDOC be able to carry out an execution  
22 by firing squad?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: No. We've never done it.  
25 I wouldn't know.

1 BY MR. KURSMAN:

2 Q. Okay. So I think those are two different  
3 answers, that you wouldn't know and no. So is the  
4 answer that TDOC -- it's your opinion that TDOC  
5 can't carry out a execution by firing squad, or is  
6 it your answer that you don't know whether --

7 A. I wouldn't -- I wouldn't know.

8 Q. Okay. But in your opinion an execution by  
9 firing squad is unbecoming?

10 MR. SUTHERLAND: Objection to the form.

11 THE WITNESS: It's my opinion.

12 BY MR. KURSMAN:

13 Q. Okay. But an execution by electrocution is  
14 not unbecoming?

15 MR. SUTHERLAND: Same objection.

16 THE WITNESS: Yes.

17 BY MR. KURSMAN:

18 Q. Okay. And an execution injecting an inmate  
19 with potassium chloride and vecuronium bromide,  
20 would that be unbecoming if we took the midazolam  
21 out of the equation?

22 MR. SUTHERLAND: Objection, form.

23 THE WITNESS: I wouldn't know. I never  
24 did it.

25 ///

1 BY MR. KURSMAN:

2 Q. Okay. But let's say the protocol required  
3 that, that it was just a two-drug protocol starting  
4 with vecuronium bromide, which would paralyze the  
5 inmate, and then potassium chloride that would stop  
6 their heart. In your mind, would that be  
7 unbecoming?

8 MR. SUTHERLAND: Objection, form.

9 THE WITNESS: I wouldn't know. I've  
10 never seen it.

11 BY MR. KURSMAN:

12 Q. Okay. So have you ever seen a firing squad  
13 execution?

14 A. No.

15 Q. Okay. So why are you opining on a firing  
16 squad execution being unbecoming, but a --

17 MR. SUTHERLAND: Objection, form.

18 BY MR. KURSMAN:

19 Q. -- two-drug protocol not being unbecoming?

20 A. Repeat your question, please.

21 Q. Sure. So a minute ago you said that it was  
22 your opinion that an execution by firing squad would  
23 be unbecoming. I asked you then about an execution  
24 with a two-drug protocol, the two drugs, aside from  
25 the midazolam, in the protocol.

1           You said to me that firing squad would be  
2           unbecoming, even though you've never seen one. But  
3           when I asked you about the two-drug protocol, you  
4           responded that you couldn't comment on that because  
5           you've never seen one.

6           So my question is why can you comment on the  
7           firing squad execution but not on a two-drug  
8           protocol involving just vecuronium bromide and  
9           potassium chloride?

10          A.       I commented on the firing range being  
11          unbecoming because me, as an individual, the way I  
12          think, to perform outdoors that form of exercise to  
13          me is unbecoming. That's what I was explaining.

14          Q.       Okay.

15          A.       The vecuronium bromide and the chloride,  
16          excluding the vecuronium bromide and using the  
17          midazolam and the chloride, I explained that I could  
18          not say because I have never seen -- I do know that  
19          the three-drug protocol we have and we're utilizing,  
20          that I've seen work twice, it does work.

21          Q.       And what do you mean by "it does work"?

22          A.       Well --

23                   MR. SUTHERLAND: Objection to the form.

24                   THE WITNESS: -- I have seen people die  
25                   gruesome deaths to where they do suffer. They do

1 all of the things that you have described. I've  
2 seen it with my own naked eye, with the gurgling and  
3 the coughing of the blood and however you want to  
4 describe it. I've seen that.

5 I've seen two individuals lay down on a  
6 gurney and was put to sleep as though you would put  
7 a baby to sleep, calmly, quietly, with nothing as  
8 though someone died of a gruesome death. Those two  
9 I can speak about and I know that it works because  
10 I've seen it firsthand.

11 BY MR. KURSMAN:

12 Q. Are you aware that the second drug in the  
13 protocol is a paralytic?

14 A. As you stated earlier, that's what you stated  
15 it is.

16 Q. And are you aware that that means it  
17 paralyzes the body?

18 A. As you stated earlier, I guess it is.

19 Q. So are you aware that if somebody is under  
20 the effects of a paralytic, even if they can feel  
21 those effects or the effects of another drug, they  
22 can't move because they're paralyzed?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: I'm not aware of that  
25 because I've never seen it, so I wouldn't know. I

1 wouldn't know what it would or would not do if you  
2 removed that paralytic drug.

3 BY MR. KURSMAN:

4 Q. That's not my question, though.

5 A. Okay.

6 Q. Are you -- are you aware that the paralytic  
7 causes the inmate, no matter what happens next, not  
8 to be able to move because it paralyzes their entire  
9 body?

10 A. I'm not aware.

11 Q. So you're not aware of what a paralytic does?

12 A. I'm aware that a paralytic will paralyze, but  
13 I think your question, if you would rephrase it --  
14 you asked me if it was not there.

15 Q. No -- oh, so -- that's not what I'm asking.

16 A. Okay.

17 Q. What I'm asking is are you aware that after  
18 somebody receives a paralytic --

19 A. Okay.

20 Q. -- no matter how much pain they're in, they  
21 cannot express that because they're paralyzed?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: Midazolam comes before the  
24 paralytic drug.

25 ///

1 BY MR. KURSMAN:

2 Q. But that's not what I'm asking right now.

3 All I'm --

4 A. Okay.

5 Q. -- asking you is this. Are you aware that  
6 after somebody receives a paralytic drug, no matter  
7 how much pain they're in, they cannot express that  
8 pain if they're under the effects of the paralytic  
9 drug? Are you aware of that?

10 MR. SUTHERLAND: Objection to --

11 THE WITNESS: No.

12 MR. SUTHERLAND: -- the form.

13 BY MR. KURSMAN:

14 Q. You're not? Okay. As the warden, as the  
15 person who oversees this execution, don't you think  
16 you should be aware of what each of these three  
17 drugs do?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: I am aware of what the  
20 three drugs do. I am not aware what the two drugs  
21 would do with the second drug being removed.

22 BY MR. KURSMAN:

23 Q. Sure. That's not what I'm asking here,  
24 though, at all.

25 A. Okay.

1 Q. What I'm asking you is this. Let's make it a  
2 little easier. What I'm asking you is this. What  
3 does the second drug do?

4 A. You said it's a paralytic.

5 Q. And what does that do?

6 A. Paralyzes you.

7 Q. Okay. And what does it mean to be paralyzed?

8 A. Not able to move.

9 Q. Okay. Is there any circumstance in which an  
10 individual could move if they were paralyzed?

11 MR. SUTHERLAND: Object to the form.

12 THE WITNESS: I would say no.

13 BY MR. KURSMAN:

14 Q. Okay. So if a paralyzed individual is in  
15 excruciating pain, would they be able to move?

16 MR. SUTHERLAND: Object to the form.

17 THE WITNESS: I would say no because  
18 they're paralyzed.

19 BY MR. KURSMAN:

20 Q. Okay. So do you understand that a person who  
21 is under the effects of the paralytic would not be  
22 able to move even if they're under excruciating  
23 pain?

24 MR. SUTHERLAND: Object to the form.

25 THE WITNESS: I understand that.



1 BY MR. KURSMAN:

2 Q. Okay. You do understand that. Okay. And do  
3 you understand the first drug in the protocol is a  
4 benzodiazepine?

5 A. Midazolam.

6 Q. Yeah. Do you know that it's a  
7 benzodiazepine?

8 A. You asked me that earlier, and I said no.

9 Q. Okay. Do you know what a benzodiazepine is?

10 A. You asked -- I understand that the midazolam  
11 will make you go to sleep, and that the  
12 benzodiazepine? No.

13 Q. And what does it mean to you to make you go  
14 to sleep?

15 MR. SUTHERLAND: Object to the form.

16 THE WITNESS: What does it mean to me to  
17 make me go to sleep?

18 BY MR. KURSMAN:

19 Q. When you use the term "midazolam will make  
20 you go to sleep," what does that mean to you?

21 A. Self-explanatory. You go to sleep, you're  
22 not aware.

23 Q. Okay. And does it matter how deep that sleep  
24 is, in your mind?

25 MR. SUTHERLAND: Same objection.

1 THE WITNESS: Yes.

2 BY MR. KURSMAN:

3 Q. Okay. And how deep of a sleep does midazolam  
4 put you in, if you know?

5 MR. SUTHERLAND: Same objection.

6 THE WITNESS: Apparently a deep sleep  
7 that you're not aware of your surroundings or  
8 someone is alerting you --

9 BY MR. KURSMAN:

10 Q. Okay.

11 A. -- that's a deep sleep.

12 Q. As someone calling your name?

13 A. Yes.

14 Q. As somebody pinching your shoulder?

15 A. Yes.

16 Q. Okay. What if somebody stuck a knife in your  
17 chest?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: That I wouldn't know.

20 BY MR. KURSMAN:

21 Q. Okay. What if somebody punched you in the  
22 face?

23 MR. SUTHERLAND: Objection to the form.

24 THE WITNESS: That I wouldn't know.

25 ///

1 BY MR. KURSMAN:

2 Q. Okay. What if somebody put a lighter to your  
3 back and turned it on?

4 MR. SUTHERLAND: Same objection.

5 THE WITNESS: That I wouldn't know.

6 BY MR. KURSMAN:

7 Q. Okay. Are you aware that if you're given the  
8 second drug without enough -- without a deep enough  
9 sleep, it'll make you feel like you're choking to  
10 death?

11 MR. SUTHERLAND: Objection to the form.

12 THE WITNESS: I'm not aware of that.

13 BY MR. KURSMAN:

14 Q. Are you aware that if you're given the third  
15 drug while you're not in a deep enough sleep, as you  
16 call it, it'll make you feel like your body is  
17 burning from the inside?

18 MR. SUTHERLAND: Objection to the form.

19 THE WITNESS: I'm not aware of that.

20 BY MR. KURSMAN:

21 Q. Okay. Do you think, as the warden of TDOC,  
22 you should educate yourself on the three drugs of  
23 the protocol?

24 MR. SUTHERLAND: Objection to the form.

25 THE WITNESS: I'm educated -- I feel I'm

1 educated to the point that I know that the drugs  
2 work, what they do as well.

3 BY MR. KURSMAN:

4 Q. And have you talked to an anesthesiologist  
5 about the drugs?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: No, I haven't.

8 BY MR. KURSMAN:

9 Q. Do you know if anybody at TDOC has talked to  
10 an anesthesiologist about the drugs?

11 A. Don't know that.

12 Q. Okay. Let's go to Exhibit 6.

13 (WHEREUPON, the above-mentioned  
14 document was presented, previously marked as  
15 Exhibit Number 6.)

16 MR. SUTHERLAND: I'm sorry, which one?

17 MR. KURSMAN: Exhibit 6.

18 BY MR. KURSMAN:

19 Q. So do you see this is an email from  
20 September 7, 2017?

21 A. Yes.

22 Q. And do you see it's -- have you seen this  
23 email before?

24 A. No.

25 Q. Okay. Did you see this in a prior

1 deposition, do you know?

2 A. Can't say that I have.

3 Q. Okay. So do you see it says, "So the word  
4 from the powers that be is that they first want to  
5 try to get midazolam and go from there if there none  
6 out there to get."

7 Do you see that?

8 A. I do see that.

9 Q. Are you part of the powers that be?

10 A. No.

11 Q. Okay. There was also a Powerpoint that was  
12 exhibited around this time that discussed the  
13 efforts to get pentobarbital. Were you part of the  
14 audience when that Powerpoint was presented?

15 A. No.

16 Q. Okay. Do you know if TDOC is still  
17 attempting to get pentobarbital?

18 A. No, I don't know that.

19 Q. Okay. Do you know what pentobarbital is?

20 A. I take it it's a drug.

21 Q. Do you know whether it's been used in prior  
22 Tennessee execution protocols?

23 A. Yes.

24 Q. Okay. Do you know whether other states are  
25 currently using a one-drug pentobarbital method to

1 execute individuals?

2 A. That I don't know.

3 Q. Okay. As warden, would you rather use a  
4 one-drug pentobarbital method than the three-drug  
5 method as required by the protocol?

6 MR. SUTHERLAND: Objection to the form.

7 THE WITNESS: Not my decision.

8 BY MR. KURSMAN:

9 Q. But my question is would you rather?

10 MR. SUTHERLAND: Same objection.

11 THE WITNESS: I don't know how it would  
12 work.

13 BY MR. KURSMAN:

14 Q. Okay. You don't know how the one-drug  
15 pentobarbital protocol would work?

16 A. How it would affect the individual. I've  
17 never seen it.

18 Q. When you were warden and when you were  
19 associate warden, are you aware that Tennessee's  
20 execution protocol called for a one-drug  
21 pentobarbital execution procedure?

22 A. Yes, for a short period of time, yes.

23 Q. And as the associate warden, wasn't it your  
24 duty to read the protocol?

25 A. It was.

1 Q. Okay. And at that time were you aware how  
2 pentobarbital worked?

3 A. I knew it was a drug, but how it worked, no,  
4 I wasn't.

5 Q. After reading the protocol, were you aware  
6 how it killed an inmate?

7 A. No.

8 Q. Okay. So the execution protocol called for a  
9 certain amount of pentobarbital to be injected into  
10 an inmate and then the inmate would die. You aren't  
11 aware of how that would work, even though you read  
12 the execution protocol?

13 MR. SUTHERLAND: Objection to the form.

14 THE WITNESS: No.

15 BY MR. KURSMAN:

16 Q. Okay. Let's go to Exhibit 7.

17 (WHEREUPON, the above-mentioned  
18 document was presented, previously marked as  
19 Exhibit Number 7.)

20 BY MR. KURSMAN:

21 Q. And let's go to the second page. You'll see  
22 it's an email from Thursday, September 7th at  
23 12:58 p.m.

24 And at this point were you the associate  
25 warden?

1 A. September '17? I was probably acting warden  
2 at that time.

3 Q. Oh, you were the acting warden at this time?

4 A. Uh-huh.

5 Q. Okay. So do you see this email says, "Here's  
6 my concern with midazolam. Being a benzodiazepine,  
7 it does not elicit strong analgesic" --

8 A. I'm sorry. You lost me.

9 Q. Oh, I'm sorry. If you go --

10 A. Second page?

11 Q. Yes, second page, three lines down.

12 A. Okay. I'm with you.

13 Q. It says, "Being a benzodiazepine does not  
14 elicit strong analgesic effects."

15 Do you know what an analgesic effect means?

16 A. Maybe allergies.

17 Q. Okay. And then it says, "The subjects may be  
18 able to feel pain from the administration of the  
19 second and third drugs. Potassium chloride  
20 especially."

21 Did the person who received this email show  
22 this to you?

23 A. I've never seen it.

24 Q. Okay. Even though -- as the person who  
25 oversees the protocol, do you think you should have



1     been shown this email?

2                   MR. SUTHERLAND:  Objection to the form.

3                   THE WITNESS:  No.

4     BY MR. KURSMAN:

5     Q.        Okay.  If I told you that the drug procurer  
6     received this email, do you think that the drug  
7     procurer should have showed you this email --

8                   MR. SUTHERLAND:  Object to the form.

9     BY MR. KURSMAN:

10    Q.        -- as the warden?

11    A.        No.

12    Q.        Would have you wanted to know that somebody  
13    was writing the drug procurer letting them know that  
14    inmates may be able to feel pain from the  
15    administration of the second and third drugs?

16                   MR. SUTHERLAND:  Objection to the form.

17                   THE WITNESS:  No.

18    BY MR. KURSMAN:

19    Q.        You wouldn't want to know that as somebody  
20    who's checking the consciousness of the inmates?

21    A.        No.

22    Q.        Why wouldn't you want to know that?

23    A.        Why do I need to know it?

24    Q.        Well, isn't that important to you, as  
25    somebody who's overseeing the execution, that even

1 if the inmates receive the first drug they still may  
2 feel the effects of the second and third drugs?

3 A. So you're asking me, and I don't want to  
4 rephrase your question for you, that would I want to  
5 know that a person would be able to feel something  
6 after the first and second drug is given --

7 Q. After the first drug is given.

8 A. After the first drug is given, would I want  
9 to know that?

10 Q. Yes.

11 A. Not necessarily.

12 Q. Okay. Are you concerned with how much pain  
13 the inmates feel during an execution?

14 MR. SUTHERLAND: Objection to the form.

15 THE WITNESS: That wouldn't be my  
16 concern.

17 BY MR. KURSMAN:

18 Q. Okay. So if the execution protocol called  
19 for an execution that you knew would inflict a high  
20 level of pain on an inmate, would you still carry  
21 out that execution as the warden?

22 MR. SUTHERLAND: Objection to the form.

23 THE WITNESS: Such as a firing squad?

24 BY MR. KURSMAN:

25 Q. Any. Any.

1 A. I'm sorry?

2 Q. Any. Any execution method.

3 A. It's part of the process.

4 Q. So is that a "yes"?

5 A. That's a "yes."

6 MR. KURSMAN: Okay. Could we take a  
7 quick break? Thanks.

8 THE VIDEOGRAPHER: One moment, please.  
9 All right. We are going off the record at 4:29 p.m.

10 (Recess observed from 4:32 p.m. to  
11 4:43 p.m.)

12 THE VIDEOGRAPHER: Back on the record at  
13 4:40 p.m.

14 BY MR. KURSMAN:

15 Q. Warden Mays, while we were on break, was  
16 there anything that you thought of that would change  
17 your testimony that you gave in the last session?

18 A. No.

19 MR. KURSMAN: Okay. I think I am done  
20 with my questions. I just want to put on the record  
21 that prior to this deposition, we entered Exhibits 1  
22 through 65. In this deposition we entered Exhibits,  
23 I believe, 66, 67, and 68 and then reused a few from  
24 prior depositions. So I would just ask the court  
25 reporter to attach the packet, if that's fine with

1     you, Mr. Sutherland.

2                   MR. SUTHERLAND:   I'll let Mr. -- it's  
3     fine with me.

4                   MR. MITCHELL:    Yeah, that's fine.

5                   MR. KURSMAN:    Okay.   Great.   So I am  
6     done and we can go off the record.

7                   THE VIDEOGRAPHER:  All right.   If there  
8     are no further questions, this concludes the  
9     deposition.   The time is 4:41 p.m.

10                   (The following was off the video  
11    record:)

12                   THE REPORTER:   Do you want this  
13    transcript?

14                   MR. KURSMAN:    Yeah, but just regular.

15                   THE REPORTER:   And you all want a copy?

16                   MR. MITCHELL:   Yes, please.

17                   THE REPORTER:   Do you want to read and  
18    sign?

19                   MR. MITCHELL:   Yeah.

20                   (Proceedings adjourned at 4:44 p.m.)

21                   FURTHER DEPONENT SAITH NOT.

22

23

24

25

REPORTER'S CERTIFICATE

I certify that the witness in the foregoing deposition, WARDEN TONY MAYS, was by me duly sworn to testify in the within entitled cause; that the said deposition was taken at the time and place therein named; that the testimony of said witness was reported by me, a Shorthand Reporter and Notary Public of the State of Tennessee authorized to administer oaths and affirmations, and said testimony, pages 1 through 314, was thereafter transcribed to typewriting.

I further certify that I am not of counsel or attorney for either or any of the parties to said deposition, nor in any way interested in the outcome of the cause named in said deposition.

IN WITNESS WHEREOF, I have hereunto set my hand on August 9, 2021.



Terri Beckham, RPR, RMR, CRR, LCR No. 355  
My commission expires: 3/6/2022



E R R A T A

I, WARDEN TONY MAYS, having read the foregoing deposition, pages 1 through 314, taken July 27, 2021, do hereby certify said testimony is a true and accurate transcript, with the following corrections, if any:

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\_\_\_\_\_  
WARDEN TONY MAYS

\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
My commission expires:

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**Exhibits**

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**Ex 01 -****Warden Tony M**

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**Ex 07 -****Warden Tony M**

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**Ex 65 -****Warden Tony M**

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**Ex 66 -****Warden Tony M**

**ays** 5:9 283:11,13

**Ex 68 -****Warden Tony M**

**ays** 5:11 284:14,  
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